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We confess our appreciation of the complimentary remarks about this JOURNAL in a late issue of the *Michigan Law Journal*, an entertaining monthly published by the law students of Michigan University. A compliment from cotemporaries is so infrequent that we feel like making special mention of any. Our Michigan friend says that "The CENTRAL devotes more space to its notes of recent decisions and frequently quotes the more important of them. Every number contains an article which is usually upon some technical legal subject and of special interest to the profession. It only publishes one case in full, as a rule, but always adds copious and valuable notes. The weekly digest of all the current decisions of all the courts is a feature of the CENTRAL which greatly enhances its value and which the busy lawyer must certainly appreciate."

The leading article in this issue on the subject of "Residence of Corporations under the Removal Act" deals with a question which, since the passage of the new Removal of Causes Act, has given considerable trouble to the courts and has been productive of much conflict of opinion. The question, stated succinctly, is whether a corporation like a natural person, may, for the purposes of federal jurisdiction and removal, become a resident of a State in which it is not a citizen. The reader will find in the article referred to sufficient ground for the belief that some of the courts have reached an erroneous conclusion upon the question and that the intent of the act, confining the right of removal to non-residents, requires that it should apply to corporations, and that for the purpose of suing and being sued a corporation may become a resident of each State in which it does business under State law. As the writer truly says it was the evils resulting from the exercise of the right of removal by corporations that led to its restriction in the matter of residence.

In connection with this general subject of jurisdiction of federal courts, it is of interest to read the opinion of the Supreme Court of the United States in the recent case of *Ex parte* Shaw, where it is held that under Act of Congress of 1887, as corrected by the act of 1888, a corporation incorporated in one State only and having a usual place of business in another State, cannot be sued in a Circuit Court of the United States held in the latter State, by a citizen of a different State.

It will be observed that this case deals simply with the question of the jurisdiction of United States Circuit Courts and not with that of the removal of causes, though its decision appears to involve the question as to whether a corporation can be considered a resident of a State in which it had not been incorporated. The court reviewed at length the different Acts of Congress and the decisions of that court regarding the original jurisdiction of the Circuit Courts of the United States over suits between citizens of different States. The fact that there has been a diversity of opinion upon the subject in the circuit courts was commented upon.

The court contended that the statute now in force has repealed the permission to sue a defendant in a district in which he is found and has peremptorily enacted that "where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." The court says of this clause, that in a case between natural persons it would not allow a suit to be brought in a State in which neither is a citizen and that if congress in framing this clause did not have corporations in mind, there is no reason for giving the clause a looser and broader construction as to artificial persons who were not contemplated, than as to natural persons who were. If, they say, as it is more reasonable to suppose, congress did have corporations in mind, it must be presumed also to have had in mind the law as long and uniformly declared by this court, that within the meaning of the previous Acts of Congress, giving jurisdiction to suits between citizens of different States, a corporation could not be considered a citizen or a resident of a State in which it had not been incorporated.

A Detroit, Michigan court has decided that a man cannot swear on his own premises, at least that he cannot indulge in profanity so loud and in such a way as to annoy his neighbors. And we have no doubt that the court is right, though the proposition at first might strike one as somewhat novel. The case was a bill in equity for an injunction by a neighbor who sought to restrain the defendant from swearing and so using his voice as to constitute himself a nuisance. The defendant with great plausibility, contended that his voice was given him by God and couldn't well be taken away by a court of inferior jurisdiction. But the court failed to see the force of the argument and concluded to muzzle the defendant. Clearly, if the defendant's voice was a nuisance and a damage to property rights it was the right and duty of a court of equity to restrain it.

NOTES OF RECENT DECISIONS.

INJUNCTION—RESTRAINT OF LIBELOUS PUBLICATIONS—INFRINGEMENT OF PATENT.—In Grand Rapid School Furniture Co. v. Harvey School Furniture Co., the Supreme Court of Michigan held that a company which has been for a long time attempting intimidation by the issue of circulars, threatening suits against all persons buying or using a competitor's manufactures, falsely stating that they infringe its patents, and which afterward obtains, by fraud and collusion, and for the purpose of injuring the competitor's business, a decree purporting to be an adjudication on the merits of the dispute, will be restrained by a court of equity from using or publishing such decree. The court said:

> The English courts, by recent decisions, have exercised the injunctive jurisdiction to restrain injurious publications concerning property which operate as a slander of the owner's title, and libelous publications which are injurious to the plaintiff's business, trade, or profession, and the wrongful use of a name by which the public would be misled, and the plaintiff injured in his business. Thus far however most of the American courts seem unwilling to follow the example of the recent English decisions, and decline to extend the jurisdiction, so as to restrain such torts as libels on business, slanders of title, and the like. In Massachusetts the English decisions are expressly repudiated. Boston Diatite Co. v. Florence Manuf'g Co., 114 Mass. 69; Whitehead v. Kitson, 119 *Id.* 484. Injunctions to restrain libelous publications concerning plaintiff's business were also refused in Association v. Boogher, 3 Mo. App. 173; Mauger v. Dick, 55 How Pr. 132; Singer Manufg's Co. v. Domestic Sew. Mach. Co., 49 Ga. 70. In the case of Emack v. Kane, 34 Fed. Rep. 46, Judge Blodgett allowed the injunction. It appears that Kane issued and widely distributed circulars in which he claimed that Emack's goods infringed his patent. He stated that he should not sue Emack, but would bring suits against all customers of Emack, and collect royalty and damages from all of them. Judge Blodgett said: "The *gravamen* of this case is an attempted intimidation by the defendant of complainant's customers by threatening them with suits which defendant did not intend to prosecute. * * * If a court of equity cannot restrain an attack like this upon a man's business, then the party is certainly remediless, because an action at law in most cases would do no good, and his ruin would be accomplished before an adjudication could be reached." In the recent case of Casey v. Typographical Union 45 Fed. Rep. 135, the case of Emack v. Kane, *supra*, was cited and approved by Judge Sage. It appeared in the Casey case that parties had conspired together to injure the complainant in his business. Circulars were gotten out and widely distributed, containing threats of pecuniary loss and injury to those who should do business with the complainant. The claim was made in that case as in this, that equity had no jurisdiction, because the injurious publication was merely a libel on complainant's business, and for any loss which the union inflicted, he had a plain and adequate remedy at law. Judge Sage remarked however that it is idle to say that such publications are nothing more than libels, and that the only remedy for the injury inflicted was an action of law; that, while they have certain characteristics of libels, they are more than libels, and there is no plain and adequate remedy at law for such injuries. We think the bill in this case states a case materially different from the Massachusetts cases and other cases holding that equity has no jurisdiction to restrain a libel.

TAXATION—EXEMPTION — MANUFACTURING CORPORATION.—It is held in Commonwealth v. Wm. Mann Co., 24 Atl. Rep. 601, by the Supreme Court of Pennsylvania, that a statute exempting from taxation, corporations "organized exclusively" for manufacturing purposes and "actually carrying on manufacturing within the State" does not render a corporation chartered to do manufacturing only, but which is engaged in other business as well as manufacturing, wholly exempt; but only the amount of its capital employed otherwise than in manufacturing is taxable. The court said in part:

> To organize, is to furnish with organs. An organ is defined to be an instrument or medium by which an action is performed or an object accomplished. The medium by or through which a corporation can alone act or accomplish the object for which it was created is the officers provided for in the law of its being. Hence it is organized when these officers have been appointed and taken upon themselves the burden of their offices. It is then furnished with organs; "endowed with capacity for the functions of life" (Webst.); "qualified for the exercise of its appropriate functions." (Amer. & Eng. Enc. Law.) And this is the sense in which the word "organize" is used in

statutes providing for the incorporations of companies for various purposes. A corporation being thus organized is, of course, organized for a purpose, not aimlessly and indefinitely, but necessarily for a purpose which it has capacity to accomplish. Being the creature of law, it has capacity to accomplish that only which it is expressly or by necessary implication authorized by its charter to do. Com. v. Erie & N. E. R. Co., 27 Pa. St. 339. The defendant's charter authorized it to manufacture blank books and stationary, and—what may be considered necessary incidents to that business— to print, lithograph, and sell its products. Nothing more being expressed, everything else was excluded. It was therefore organized exclusively for manufacturing purposes, and, as it was found to have been actually carrying on manufactnring within the State during the tax year, it was within the proviso exempting manufacturing companies from taxation. But it does not follow that a company which is organized exclusively for manufacturing purposes, and which actually carries on manufacturing within the State, but which employs part of its capital in other than its strictly manufacturing operations, is wholly exempt from taxation. To so hold would be to offer a premium to such companies for trangressing their charters, and give them an advantage over others with which they might come in competition outside of their legitimate field of operations, which the legislature cannot be presumed to have intended.

CONTRACT OF GUARANTY — AGENT—CONSTRUCTION.—The case of Staver v. Locke, decided by the Supreme Court of Oregon is an illustration of the strictness with which contracts of guaranty are construed in favor of the guarantor. There an agent for the sale of farm machinery entered into a contract with his principal, agreeing, among other things, as follows: "To guaranty the payment at maturity, or any time thereafter, when demanded, of all notes and renewals of notes, taken for goods sold under this contract, indorse said note as soon as taken, waiving demand, protest, and notice of non-payments. Failure to indorse by said agent shall not affect above guaranty of payment." At the end of said contract was written the guaranty sued upon: "Guaranty. For value received, and in further consideration of one dollar to him in hand paid by said Staver & Walker, the undersigned do hereby guaranty the faithful and full performance by the agent named in the foregoing of all the agreements and engagements therein entered into by the said agent." This instrument was signed by the defendant sought to be charged as guarantor.

It was held that his liability did not extend to the actual payment of the notes but only to the procuring of the guaranty of the agent thereon. The following is from the opinion:

If these words in themselves import a guaranty by W. F. Locke of the payment of all notes taken by him for goods sold, then there is much force in the appellant's contention; on the other hand, if they only bound W. F. Locke to indorse the notes in the manner therein specified, then there is no reason whatever to claim that the defendant is liable on his guaranty, for the reason the complaint alleges W. F. Locke duly indorsed them. The phraseology used is obscure, and its meaning is not obvious, and the inference to be drawn from different parts of the agreement is so contradictcry and unsatisfactory that we fail to derive any aid from that source. For instance, the fourth claim obliges the agent to settle for all goods sold either by cash or notes at the time of delivery, said agent to be held liable for any loss or damage caused by a deviation from this stipulation.

"It may be suggested that if he was liable at all events, or as guarantor for all goods sold, why does this claim only hold him liable for any loss or damage caused by a deviation from this stipulation? Besides, if he was liable as guarantor in every case where the purchaser did not pay, why indorse the notes at all? Staver & Walker, under that construction, held a single guaranty, covering all defaults, and the indorsements of the notes added nothing to the liability of the agent. Then, on the other hand, it is declared, in the latter part of clause 6, that 'failure to indorse by said agent shall not affect above guaranty of payments.' This language seems to assume that, aside from the indorsements provided for, the contract contained a guarantee of payment. What W. F. Locke agreed to do was to guaranty the payment at maturity, etc., and the subsequent language of clause six seems to indicate in what manner the guaranty was to be made, namely, by indorsing said notes as soon as taken, waiving demand, protest and notice of non-payment, etc., all of which the pleadings admit he fully performed. The plaintiff's contention seems somewhat forced, and the construction contended for strained and unnatural. The intention of the parties to a contract of guaranty, when ascertained, is to prevail as in other contracts. Still it is said that it is now too well settled to admit of doubt that a guarantor, like a surety, is bound only by the strict letter or precise terms of the contract of his principal whose performance he has guarantied; that he is in this respect a favorite of the law, and that a claim against him is *strictissimo juris* (Kingsbury v. Westfall, 61 N. Y. 356). And, in determining the liability of a surety or a guarantor, it must be remembered that he is a favorite of the law, and has the right to stand upon the strict terms of his obligation, when such terms are ascertained (People v. Chalmers, 60 N. Y. 154; State v. Churchill, 48 Ark. 426, 3 S. W. Rep. 352, 880). J. S. Locke's liability depends entirely upon the construction we have given in article 6 of the agreement. 'He guarantied the faithful and full performance, by the agent named in the foregoing, of all the agreements and engagements therein.' If W. F. Lock guarantied the notes by making the proper indorsement thereon, then he performed his agreement in that respect, and the respondent would not be liable. J. S. Locke did not guaranty that the agent would pay the notes which he might take from purchasers of the plaintiff's goods, but only that such agent should guaranty the payment. There is no breach of the agreement shown to charge the respondent."

EVIDENCE — OFFERS OF COMPROMISE — SETTLEMENT OF CLAIM—ADMISSION.—In Smith

v. Whittier, the Supreme Court of California hold that a statement made by one of several defendants to his co-defendants, advocating the settlement of plaintiff's claim is not within the rule excluding offers made for the purpose of compromise, but is competent as an admission of liability. The court says:

Upon the cross-examination of the defendant Ravekes the defendant endeavored to show that he had taken no part in the defense of the present action; and upon his re-direct examination, he was asked whether he had not advocated with his firm a settlement of the case, to which the defendants objected upon the ground that it was "incompetent and irrelevant," but did not specify the grounds upon which they claimed it to be incompetent. The court overruled their objection, and it is now contended by them that in this ruling the court violated the rule which precludes a party from giving evidence relative to offers for a compromise, which have been rejected. In the present case, however, there was no treaty for a compromise depending between the parties, and the testimony introduced did not relate to the offer of any terms of compromise, or to any dealing with the adverse party upon the subject of a compromise; and the rule which excludes offers made for the purpose of settlement is inapplicable. The statement of a party against whom a claim is made that he is willing to settle the claim is a declaration by him against his interest, sometimes called a "self-disserving" or "self-harming" statement; and section 1870 of the Code of Civil Procedure provides that upon the trial of a cause evidence may be given of "(2) the act, declaration, or omission of a party, is evidence against such party." Such declarations are classed in books on evidence under the head of "Admission." Mr. Stephen, in his treatise on "Evidence, defines an admission to be "a statement, oral or written, suggesting any inference as to any fact in issue, or relevant, or deemed to be relevant, to any such fact, made by or on behalf of any party to any proceeding." Within this definition the testimony sought from the witness Ravekes was admissible. Such a declaration, in the absence of any other evidence than that he made it, would justify a jury in drawing the inference that he considered himself liable for the claim, since ordinarily men are willing to settle only those claims for which they are liable, and consequently the statement is admissible upon the same principles as would be his direct statement that he was liable for the claim. The making of such admission is a fact which is relevant to the issue upon his liability. Proof of making the admission is not, however, proof of the fact of his liability, but is only evidence in support of proving that fact; and the weight of such evidence, as well as its sufficiency for authorizing such inference, must be determined by the jury. The declaration may have so little weight in itself that the jury would not regard it as entitled to any consideration; and the party making the declaration may countervail its entire weight and sufficiency by showing the circumstances under which it was made, or the purpose for which he made it, as, for example, that he made it under a misapprehension of the facts, or with a view to a speedy determination of the controversy, or out of a charitable regard for the claimant; but the declaration itself is admissible upon the ground that the facts implied therein are relevant to the issue in the case. Admissions are generally regarded as weak evidence for the proof of a fact, and are never conclusive of the fact stated, or of the inference to be drawn therefrom, and our statute requires the jury to be instructed on all proper occasions "that the evidence of the oral admissions of a party ought to be viewed with caution." Code Civil Proc. § 2061. (4) An exception to the admissibility of such admissions exists when they are made by way of an offer to buy peace, or with reference to negotiations with the adverse party for a compromise of the dispute. Under such circumstances, except as they are admissions of distinct facts, they are regarded as hypothetical admissions from which it is not proper to draw any inference of liability, and therefore are not to be received in evidence. The rule, however, which excludes offers made for the purpose of a compromise, does not apply to statements made by a party which are in no wise connected with any attempt at a compromise, whether these statements are made to a stranger or to his co-defendant. West v. Smith, 101 U. S. 273; Ashlock v. Linder, 50 Ill. 169; Marvin v. Richmond, 3 Denio, 58; Molyneaux v. Collier, 13 Ga. 415; McLendon, v. Shackelford, 32 Ga. 474; Clapp v. Foster, 34 Vt. 580; Gulzoni v. Tyler, 64 Cal. 334; Greenl. Ev. § 192; 1 Phil. Ev. (Cow. & H. notes) note 124; Whart. Ev. §§ 1077, 1090.

ATTORNEY AND CLIENT—CHAMPERTY.— In Reece v. Kyle, 31 N. E. Rep. 747, the Supreme Court of Ohio renders an exhaustive and interesting opinion on the subject of what constitutes champerty. The holding of the court is that an agreement between client and attorney, by which, in consideration of an assignment to the attorney of a judgment obtained by him for the client, the attorney agrees to render legal services in an effort to collect the judgment, to advance costs and expenses in the first instance, one-half to be repaid by the client in case of failure, and the net proceeds of the judgment, in case of success, to be equally divided, is not without consideration, nor unlawful on the ground of champerty, and, if otherwise valid, will be enforced. Spear, C. J., says, *inter alia:*

In several of the States of the Union statutes have been passed making maintenance in varying forms unlawful, while in other of the States the doctrine is scarcely recognized, even by the courts. No statute similar to the English statutes has ever been enacted in Ohio. Champerty has, however, been the subject of judicial inquiry, and has been held to avoid contracts in which it was present. In Key v. Vattier, 1 Ohio, 132, the vice of the contract was that the attorneys were to save and keep the client harmless from all costs and charges, and no compromise was to be made except the attorney join in it. In Weakly v. Hall, 13 Ohio, 167, the debt was released by the creditors, to the debtor, after assignment by him under an agreement by which the assignee, not a lawyer, engaged to collect the claim in the assignor's name, to employ counsel, advance all money, procure bail, etc., reimburse himself for his allowances from the proceeds when collected, and receive a portion of the avails for his compensation and the court held the release effectual, although suit had been commenced

and money expended in accordance with the contract. In Stewart v. Welch, 41 Ohio St. 483, by a divided court, it was held that a contract whereby the claim was assigned to Welch, who brought suit in his own name, could not be enforced; it appearing that the contract was made for the purpose of carrying on litigation without expense to and free from control of the assignor, who was to receive nothing except a share of the recovery.

It will be noted that there are important distinctions between these cases and the case at bar. In each case the suit was to be prosecuted wholly without cost or expense to the original owner of the claim, and it does not appear that the party maintaining the contract had any interest in or claim upon the cause of action other than that given by the assignment. So that for the purpose of nullifying the contract between McMillan and Reece, we are asked to take a step in advance of previous decisions. Ought this to be done?"

It is difficult, at best, to reconcile the strict law of maintenance and champerty with our ideas of the rights of property, and the right of the citizen to contract. Among the fundamental rights is the right to acquire, possess, and dispose of property. The right of disposition necessarily inheres in the right of ownership. We are taught that a chose in action is as much property as a thing in possession, and that in this day the right to dispose of such property is as high and free from doubt as is the right to sell the horse or farm of which the seller has manual possession. And if one may lawfully dispose of such property, why may he not dispose of it upon such terms as to him may seem advantageous. That the consideration received by McMillan is a promise by Reece cannot be fatal to its legality. It would be conceded that McMillan might have assigned his judgment upon Reece's written agreement to dig a ditch or plow a field or build a house. So, too, Reece might have agreed to sell his legal services for a promise by McMillan for some labor or service on his part. And yet, while either can purchase of the other, there appears, under the early decisions, an insuperable objection to the valuable thing which each has, being the subject of barter between them. Upon reason, the objection would seem to lack substance. It has been based upon grounds of public policy.

Of course, if a proposed contract is clearly against public policy, the courts will say it cannot be entered into. But why, applying this test, should we limit the subject of contracts for compensation otherwise than by discriminating against transactions which are prohibited by statute, or are immoral or hurtful in their nature, in the sense of contravening some established interest of society? That contracts similar to the one at bar were regarded dangerous three or four hundred years ago is not a powerful reason for so regarding them now, when we consider that social conditions, and the law in other important respects, have undergone radical changes. Fortunately the condition of society to-day is on a higher plane than in the chaotic times of Henry VIII., our judicial methods are more enlightened, and the day of combinations among the powerful to oppress the weak in the courts has gone by.

It will be borne in mind that great scrutiny was given in England to the acts of counselors and attorneys, because of the peculiar relation which the law placed those officers in with regard to their clients. The former were incapacitated to make any contract for compensation with the client, though they might accept a gratuity, while the latter might make such contract only as the law had made for him in fixing for every service a corresponding fee. A contract, therefore, between a counselor or attorney and his client, for a share of the thing in suit, would have been invalid on this ground as well as others. No such strictness ever obtained here. Our laws have always recognized the right of either to compensation for his legal services in a reasonable amount, either on a *quantum meruit* or upon special contract. Beyond this, the propriety of accepting compensation by way of a fee contingent upon the event of the suit, and payable out of the thing recovered, has been recognized; also the advancing by the attorney, for the benefit of the client, of funds in payment of costs and necessary incidental expenses. Indeed, such advances by the attorney in the progress of litigation are so common that to denounce the practice as improper would be to condemn the daily acts of the most honorable members of the profession. Wylie v. Coxe, 15 How. 415; Stanton v. Embrey, 93 U. S. 548; Allard v. Lamirande, 29 Wis. 502; Newkirk v. Cone, 18 Ill. 449; McDonald v. Railroad Co., 29 Iowa, 171; Quaint v. Mining Co., 4 Nev. 305. This, upon the idea of duty on the part of the profession to investigate the claims and give professional aid in redressing the wrongs, of the indigent who have been injured, for in this way many poor people are enabled to obtain justice where, without such aid, they would be remediless. And it has been considered that there is no practical distinction between such an arrangement and one where counsel undertake, for an agreed fee, to be paid in the future, the prosecution of a case for a client so poor that unless the cause be gained the attorney could not possibly realize any compensation whatever. That a contract of the latter kind is legal was held in Moore v. Trustees, 9 Yerg. 119.

As before stated, we have never had in Ohio any legislation upon that phase of maintenance known as "champerty." But the evil of stirring up suits and controversies, whereby persons should be defrauded or injured, was early the subject of legislation. By the act of February 10, 1824, the encouraging, exciting and stirring up of any suit, quarrel, or controversy, between two or more persons, by certain named officers, including attorneys and counselors at law, with intent to injure such persons, was made an offense punishable by fine of not more than $500, and liability to the party injured in treble damages, which, as to the penal sanction, is the law to-day. It would seem that the terrors of this act would be sufficient to protect the people from any vestige of the evil tendency to combinations by the strong to injure the weak by oppressive litigation.

The conduct of attorneys is subject to proper scrutiny by the courts. The maintenance of a high character for dignity and integrity on their part is essential to the security of the community, and the due administration of justice. Any infraction of the letter of this statute would entail its penal consequences upon an offending attorney, and the courts would not hesitate to hold void any contract violative of its spirit, whether coming within the strict letter or not. So, too, the courts have been, and continue to be, careful not to sanction contracts which appear to encourage a gambling spirit, one leading to the prosecution of pretended or obsolete claims, for a possible high reward. And anything like sharp practice, or the taking of undue advantage by the attorney of the confidence or necessities of the client, would meet with no favor nor mercy at the hands of the courts. At the same time, it would not be wise to carry rules adopted originally for the purpose of preventing the powerful from oppressing the weak, by groundless suits in the courts,

to the extent of hindering the weak in efforts to avail themselves of lawful remedies against the powerful, now that the conditions making the ancient rules necessary have substantially disappeared, and new conditions, arisen, by reason of which it has become the interest of the powerful to embarrass and hinder the dependent and weak from obtaining speedy justice in the courts. Nor would it be judicious to extend arbitrarily those rules which say that a given contract is against public policy, for men of full age and competent understanding ought to have the utmost liberty of contracting. Their contracts, when entered into freely and voluntarily, should be held sacred, and should be enforced by the courts, for it is a paramount public policy that courts should not likely interfere with the freedom of contract. Sir G. Jessel, in Printing Co. v. Sampson, 19 Eq. 462. It is much more easy to denounce, in general and sweeping terms, contracts said to involve champerty, as "odious," and "worthy only of the severest condemnation," than it is to point out wherein it is wrong to make an effort, under the circumstances disclosed in the case at bar, to enforce a claim solemnly adjudicated by a court to be just and legal, by one who has an interest in the judgment because of services rendered in obtaining it. It is difficult, also, to perceive how such a proceeding would contravene any established interest of society, or tend to corrupt the fountains of justice, or bring the legal profession into disrepute.

Decisions by courts of other States have been cited. We have examined them. Many are based upon statutes, and have but little bearing in this State. Others are in conflict, and cannot be reconciled. The holding in the recent case of Pennsylvania Co. v. Lombardo, (Ohio), 29 N. E. Rep. 573, recognizes the doctrine that a champertous agreement is against public policy and void. As it is not stated what will constitute champerty in an agreement, it is to be inferred that the doctrine is governed by previous holdings; and the point determined is that, whether the contract between Lombardo and his attorney was shown to be champertous or not, his claim against the railroad company was not affected by it. It is not necessary, in order to dispose of the present case, to unsettle the Lombardo Case, nor any of the previous decisions of this court, and there is no purpose to do so. Nor is it necessary to formulate any new rule on the subject. Each case as it presents itself may be safely left for disposition on its own peculiar facts. We are not, however, disposed to go further in enforcing the ancient rules that the decisions by this court have heretofore gone. In the present case, if the contract rests upon a consideration which the law will sanction,—and, for reasons heretofore stated, we think it does,—there would seem to be an end of the inquiry. The promise to advance costs in the first instance is neither illegal nor improper, and the agreement to pay one-half the costs by Reece was no more than, being owner of one-half the judgment, he was, in fairness and equity, bound to do.

WITNESS—TRANSACTIONS WITH DECEDENT—NEGOTIABLE INSTRUMENT—INDORSEMENT BEFORE DELIVERY.—In First National Bank v. Payne, 20 S. W. Rep. 41, the Supreme Court of Missouri holds that where a note, payable to the maker, and indorsed by several persons, is delivered to the cashier of a bank as collateral, and the bank in an action against the indorsers introduces its bookkeeper for the purpose of showing that the note was not indorsed by the maker until after its delivery to the bank, and until after its indorsement by defendants and that the bank therefore was entitled to recover of defendants as makers, defendants are entitled, notwithstanding the death of the maker and the cashier to testify in rebuttal that the note was not so indorsed. It was also decided that the doctrine that when a person not a party to a note puts his name upon it before delivery he thereby makes himself an original promisor and does not apply to a note payable to the maker and indorsed before indorsement or negotiation by the maker. Upon the latter point, the court through Brace, J., says:

He was both the drawer and payee of the note. Now, while in a long line of decisions in this State, following Powell v. Thomas, 7 Mo. 440, it has been consistently and persistently held that where a person indorses a negotiable promissory note in blank, not being a payee or indorsee thereof, he is to be treated *prima facie* as the maker of the note (Lewis v. Harvey, 18 Mo. 74; Schneider v. Schiffman, 20 Mo. 571; Baker v. Block, 30 Mo. 225; Association v. Wolff, 45 Mo. 105; Kuntz v. Temple, 48 Mo. 71; Seymour v. Farrell, 51 Mo. 95; Mammon v. Hartman, 51 Mo. 168; Stagg v. Linnenfelser, 59 Mo. 336; Cahn v. Dutton, 60 Mo. 297; Chaffe v. Railroad Co., 64 Mo. 196; Semple v. Turner, 65 Mo. 696; Bank v. Hammerslough, 72 Mo. 274), yet it will be found on examination that in every one of these cases the payee of the note indorsed was a third person. We have not found a case in our reports where it has ever been applied to an indorsement of a note made payable to the order of the drawer. Such a note was an incomplete and void contract at common law, but by the custom of merchants, after it had been negotiated, that is, after the drawer, as payee, had indorsed his name upon the note, and delivered it to a third person, it was treated as a valid negotiable promissory note, payable to bearer, and has been so held in England since the statute of 3 and 4 Anne, ch. 9 (temp. 1704.) Our statute (Rev. St. 1889, § 735) is declaratory of the law merchant upon the subject. The character of such an instrument before it is indorsed by the maker is clearly stated by Parke, B, in Hooper v. Williams, 2 Exch. 13, 20 (1848), in the following language: "No right to sue could exist in any one in the case of a note payable to the maker's order, until the order was made in the shape of an indorsement. Until that indorsement was made, it was an imperfect instrument, and in truth not a promissory note at all, and consequently not transferable under the statute. What, then, is the effect of the indorsement to another person? We think it was to perfect the incomplete instrument, so that the original writing and indorsement, taken together, became a binding contract, though an informal one, between the maker and indorsee, and then, and not until then, it became an assignable note." See, also, Smalley v. Wright, 14 Me. 442; 1 Daniel, Neg. inst. § 130; Tied. Com. Paper, § 20; Little v. Rogers, 1 Metc. (Mass.) 108. The language of the learned judge in Smalley v. Wright, *supra*, is that the note "is no better than blank paper so

long as it remains in the hands of the maker. Although it has the form it has not the legal vitality of a contract. It becomes a contract only by being negotiated. . . .

We cannot doubt, for the reasons already stated, that such paper is invalid as a contract until it is indorsed. It is the indorsement alone which gives it efficacy." Now, when one indorses such an incomplete instrument before it is made perfect by the indorsement of the maker as payee, and delivers it to such maker, what is his contract? What can his contract be, other than to authorize the maker to make it a complete and binding contract on him as an indorser by writing over his name the maker and payee's name, on the back of the note, as first indorser? This would seem to follow with as much or more force than the assumption that one who indorses a completed note, having one person for its maker and another person for its payee, but to which he is a stranger, before it is indorsed by the payee, intended to contract as a maker. In the one case, by indorsing the note, in itself a complete contract, on which he is neither payee nor indorsee, he must be presumed to have intended to charge himself in some relation; and as he could not on this completed contract charge himself as indorser, he must be presumed to have intended to charge himself as maker. In the other, by indorsing a note which in itself is not a complete contract he must be presumed to have intended to charge himself only in the manner in which his name will appear on the note when the contract is perfected by the indorsement of the maker's name as payee, when he will appear on the paper as indorsee; and his contract with a subsequent holder is that of an indorser, for as such only he appears on the note after it has acquired validity as a contract. Blatchford v. Milliken, 35 Ill. 434; Kayser v. Hall, 85 Ill. 511.

The doctrine that when a person, not a party to a note, puts his name upon it before it is delivered as a valid contract, he thereby makes himself an original promisor, so long maintained in this State, was taken from Massachusetts,—the case of Powell v. Thomas, *supra*, being bottomed on Mories v. Bird, 11 Mass. 440; and while the doctrine was maintained there in a long line of decisions with the same persistency as here until set aside by legislative enactment in 1874 (Pub. St. Mass. ch. 77, § 15), yet in 1859, long before such legislative interference, the supreme court of that State refused to extend the principle to the case of a note payable by the drawer to himself and indorsed by a stranger to the note before negotiation by the drawer; that court saying, in Clapp v. Rice, 13 Gray, 403, that "the correctness of these decisions, however much they may be obnoxious to criticism upon principle, it is too late to question. They have formed an established rule for the construction of that class of contracts in Massachusetts which cannot now be disturbed without manifest injustice. But the doctrine is some what anomalous, and is not to be extended beyond the line of adjudicated cases." This is precisely the situation with us; and, as we have seen, the case in hand does not come within the line of the decisions in this State sustaining this doctrine, and, if our reasoning be correct, is not within the principle upon which they are based, and ought not to be ruled by them. We also are unwilling to extend the doctrine beyond the line of the adjudicated cases.

RESIDENCE OF CORPORATIONS UNDER THE REMOVAL ACT.

The act of congress of Aug. 13, 1888, providing for the removal of causes from State to federal courts, imposes a restriction upon the right of removal not contained in any of the earlier acts. In all suits of a civil nature, of which the United States Circuit Courts are given jurisdiction, other than those arising under the constitution, laws or treatises of the United States, the right of removal is confined to non-resident defendants. By the former law the right was given irrespective of the residence of the petitioner. But the language of the law now is, "that the suit may be removed into the Circuit Court of the United States for the proper district, by the defendant or defendants therein being non-residents of the State."[1] Does this clause of the act apply to corporations? The cases are agreed that it applies to natural persons, so that an individual sued in a court of the State in which he resides cannot now remove the suit into the federal court, although he may be a citizen of another State. But there is an interesting conflict in the decisions of the United States Circuit Courts upon the point whether corporations are affected by this change in the law, whether in fact it applies to them, for it is all one in substance and effect, to hold that a corporation cannot become a resident of any other State than that of its incorporation, and to hold that the statute does not apply to corporations. So far as the number of decisions makes weight of authority, there is a slight preponderance in support of the rule that the residence of a corporation is unalterably fixed in the State of its incorporation; that although it may be formed in one State for the express purpose of doing business in another, and may there maintain its principal offices and carry on its operation for any length of time, although it may exercise all the rights of a domestic corporation, and be subject to the local laws for the regulation of their business, to taxation and to the process of the State courts, it still remains a non-resident of such State, and when sued therein may remove the cause into the United States court.[2] On

[1] Clause 2, § 2, Act of Aug. 13, 1888.

[2] Fales v. R. Co., 32 Fed. Rep. 673; Booth v. St. L., etc. Co., 40 *Id.* 1; Purcell v. Brit. L. & M. Co., 42 *Id.* 465; Henning v. Western Union Tel. Co., 43 *Id.*

the other hand, it has been held that the removal act of August 13, 1888, applies to corporations as well as to natural persons, and that for the purpose of suing and being sued, a corporation may become a resident of each State in which it does business under State law.[3]

Upon a question of this character, involving the jurisdiction of the United States courts in a large class of cases, a review of the decisions may be of some profit. The statute was intended to correct an evil that had been unsuccessfully assailed by several State legislatures. Corporations coming into a State and doing business there the same as domestic corporations, under the protection of State law, when sued in the State courts, were permitted under the former law to drag parties and witnesses, frequently hundreds of miles away from their homes, at great expense and loss of time, for no other reason than that their articles of association were recorded in some other State. The result was to give to these corporations a special privilege not allowed to domestic corporations, and not resting upon any just or reasonable grounds. Several of the States, attempting to do away with this barren distinction, enacted laws making it a condition to the right to do business in the State by these corporations, that they should not remove their causes from the State to the federal courts. But all this legislation was declared invalid by the United States Supreme Court.[4] This was so held on the ground that a State law could not operate to deprive the federal courts of any jurisdiction properly conferred upon them by act of congress. This change in the law was entirely in accordance with the original design in the establishment of the federal jurisdiction, so far as it was made to depend upon the diverse citizenship to the parties to the suit. It was thought when the constitution was formed that prejudices might exist between the different States and their citizens, and that an impartial tribunal should be provided for the determination of any controversies between them. But this reason for federal jurisdiction ceases when a party is sued in a State where he resides and does business, although as a matter of law he may not be a citizen of that State. The law under which such party lives and is protected in his person and property, and in carrying on his business, should be the law to determine his rights and liabilities with respect to that business. No reason is perceived why any prejudice should be presumed in such a case; and accordingly congress has said that such defendant shall not have the right to remove the suit to the federal court. Why should corporations be exempt from this provision of the act? It has now become a general rule in the interpretation of statutes relating to property rights, contracts or procedure, and referring to "persons," "residents" or "citizens," that corporations are meant to be included, especially when the intent and purpose of the statute seem to require it.[5] The purpose of the present act, confining the right of removal to non-residents, requires that it should apply to corporations, for it was the very evils resulting from the exercise of the right by corporations especially, in removing cases frequently far away from the place where the transaction arose, and where the parties and witnesses reside, that led to this restriction.

It is difficult to see how any doubt can be entertained, in view of the great obstruction and delay caused to judicial proceedings under the operation of the old law, and in view, also, of the failure of State legislation to correct the evil, that congress intended by this change in the removal act to meet the difficulty and provide an effective remedy. And since it was by corporations especially that the old law was taken advantage of to work delay, the inference is clear, in the absence of any exception in their favor, that the new law was intended to apply to them. The first case in which it was held that corporations were exempt from the provision of the second clause of the second section of the act was Fales v. C., M. & St. P. R. Co.[6] The railroad company was chartered in Wis-

97; Amsden v. Norwich Ins. Co., 44 *Id.* 515; Baughman v. Water-works Co., 46 *Id.* 4; Overman Wheel Co. v. Pope Mfg. Co., 46 *Id.* 577; Morgan v. East Tennessee R. Co., 48 *Id.* 705; Conn v. R. Co., 48 *Id.* 177.

[3] Zambrino v. R. Co., 38 Fed. Rep. 449; Riddle v. R. Co., 39 *Id.* 290; Scott v. Texas L., etc. Co., 41 *Id.* 225; Hirschl v. J. I. Case, etc. Co., 42 *Id.* 803 (by Justice Miller); United States v. South. Pac. R. Co., 49 *Id.* 297 (by Justice Harlan); New Eng. Mut. Ins. Co. v. Woodworth, 111 U. S. 138; Bank of United States v. McKenzie, 2 Brock. 393 (by Chief Justice Marshall).

[4] Barron v. Burnside, 121 U. S. 186; Home Ins. Co. v. Morse, 20 Wall. 445.

[5] Morawetz on Corp. § 457.

[6] 32 Fed. Rep. 673.

consin, and when sued in the Iowa State court was permitted to remove the cause to the United States Circuit Court, although it had for many years operated its road in the State of Iowa, maintained offices and exercised its franchise there in all respects like corporations chartered by the State. The court held that since the company was, by the fact of its incorporation, a citizen of Wisconsin, it was therefore a resident of that State and could not become a resident of any other. Some cases in the Supreme Court of the United States were cited as authority for this doctrine. Those cases arose under the former removal act. Under the former law the residence of the petitioner was entirely immaterial. The other requirements being present, it was sufficient that the parties were citizens of different States; and of course the only question the court had to deal with was the citizenship of the party. The supreme court only applied the well-established rule that nothing short of incorporation or reincorporation under the laws of a State could make a corporation a citizen of that State. There was no occasion for the court to lay down any doctrine as to the residence of corporations, and it did not assume to do so. It is certainly obvious that the supreme court cases are not in point. But subsequent decisions taking the same view continue to cite them, and no other or further reasons for the rule have been given.

It was argued by the court in the Fales case, that if congress intended to draw any distinction between the citizenship and residence of corporations, the language used in the act would have been more explicit; and assuming that the supreme court had decided that the terms were identical when applied to corporations, it is said that congress must have had this in mind and used the terms accordingly. But the assumption is unwarranted when it is shown that the supreme court decisions are not to that effect. The better presumption is, that congress used the terms citizenship and residence with knowledge of their well-established meaning and distinction; and this presumption is strengthened when the intent and purpose of the act is kept in view. The decision in the Fales case wholly ignores the distinction between citizenship and residence, and as a reason therefor assumes that congress also meant to do so. It is believed that few if any precedents can be found in the whole body of the common law sustaining these views of the federal judges, but on the contrary, the rule has been laid down in many cases, that for the purpose of suing or being sued, a corporation may become a resident of any locality in which it is found habitually engaged in the exercise of its franchises, through resident officers and agents, in like manner as if chartered under the local law.[7]

In Bristol v. C. & A. Ry. Co., *supra*, the question arose under a statute which made it unlawful for any plaintiff to sue a defendant out of the county where the latter resides, except in certain cases. Treat, C. J., said: "The residence of a corporation, if it can be said to have a residence, is necessarily where it exercises corporate functions. It dwells in the place where its business is done. It is located where its franchises are exercised. It is present where it is engaged in the prosecution of the corporate enterprise. This corporation has a legal residence in any county in which it operates the road or exercises corporate powers and privileges. In legal contemplation it resides in the counties through which the road passes and in which it transacts its business."

In C., D. & V. R. R. Co. v. Bank of North America, the question was upon a statute requiring an affidavit of merits to be filed where the defendant is a resident of the county in which the suit is brought. The court said: "The citizenship of the defendant, it will be seen, is unimportant, it will be sufficient if it is a resident of the county; and for the purpose of this question we think the well-known distinction between citizen and resident, as applicable to persons, should be observed." After quoting from the Bristol case, it proceeds: "While the citizenship of the corporation would depend upon the place of the law of its creation, its residence might manifestly, upon the principle above stated,

[7] Guinault v. L. & N. Co., 41 La. Ann. 571; Bank of United States v. McKenzie, 2 Brock. 393; Glaize v. R. R. Co., 1 Strobhart (S. C.), 70; Cromwell v. Ins. Co., 2 Rich. 512; Bristol v. C. & A. Ry. Co., 15 Ill. 436; C., D. & V. Ry. Co. v. Bank of North America, 82 Ill. 494; City of St. Louis v. Ferry Co., 40 Mo. 586; Farnsworth v. Railway Co., 29 Mo. 75; Harding v. C. & A. Ry. Co., 80 Mo. 659; Crutsinger v. Mo. Pac. Ry. Co., 82 Mo. 66; Baldwin v. Railway Co., 5 Iowa, 518; Richardson v Railway Co., 17 How. Pr. 543; People v. Frederic 33 How. Pr. 150.

be in any State where it was by comity permitted to exercise its franchises."

In the case in 1 Strobhart the court said: "Strictly speaking, a corporation can have no local residence or habitation. Created by law, and known by the legal capacities conferred upon it, it exists only in the recognition of the rights and franchises which it may claim. Wherever the law is recognized from which its franchises are derived, there it exists. The residence of the company, if a local residence, can be affirmed of it, is most obviously where it is actively present in the operation of its enterprise." The general question was passed on by Chief Justice Marshall in the Bank of the United States v. McKenzie,[8] a decision on the circuit. He held that the Bank of the United States, although by act of congress fixed and established in the State of Pennsylvania, resided as well in Richmond, Virginia, where a branch of the bank was located. The question arose on the claim of the bank that it resided out of the State of Virginia, and hence was within the exception to the statute of limitations. The chief justice said: "The banking-house of the president and directors of the office at Richmond is as fixed and notorious as the banking-house at Philadelphia. The agents of the company acting at Richmond are as notorious and as completely its agents as those who act at Philadelphia. If, then, the residence of the corporate body is fixed and ascertained by the residence of its agents or their place of doing business, it resides in Richmond as truly as in Philadelphia. So far as respects this particular contract, it may with entire propriety be said to reside in Richmond. The contract was made here, with agents who reside here, at a banking-house established here, and is to be performed at this place. In equity and reason the plaintiff cannot, I think, as to this contract, if as to any, be placed in Philadelphia." The federal judges who repudiated this well-established doctrine as to the residence of corporations, and make a rule of their own, arrive at it by the use of the same legal fiction that has been resorted to in fixing the citizenship of a corporation. The rule in regard to citizenship was attained by first regarding the citizenship of the members of the corporation as determining the citizenship of the corporation itself. The conclusive presumption was then indulged that all the members were citizens of the State under whose laws it was created.[9] But they overlooked the maxim that "a legal fiction is always consistent with equity." "Fictions of law," observed Lord Mansfield, "hold only in respect of the ends and purposes for which they were invented. When they are urged to an intent and purpose not within the reason and policy of the fiction, the other party may show the truth."[10]

Under the old law, when the citizenship of the party was alone important, when corporations were less numerous and more generally confined in their operations to the State of their creation, the fiction might be regarded as conducive to the end and purpose of the law; but in the interpretation of the present removal act, it simply operates to subvert and nullify it, so far as corporations are concerned. No doubt this question will soon come before the supreme court under the 5th section of the Appellate Courts Act of March 3, 1891, which permits an appeal direct to the supreme court in any case in which the jurisdiction of the district or circuit court is in issue. In that court the opinion of Justice Miller in the Hirschl case will have greater weight than it has had with some of the district judges of the eighth circuit. His published opinion is very brief, but it is known that the question was thoroughly considered by him, and that his attention was drawn to the various conflicting authorities.

In the Southern Pacific case Justice Harlan was called upon to decide, under the first section of the act, whether a corporation could become an "inhabitant" of any State other than that of its incorporation, and he held that it could. There is nothing in the act in its history which indicates that any distinction was meant to be taken between "inhabitant" and "resident," and the cases generally agree in holding that they are synonymous terms.[11]

The reasoning of the supreme court in New England Ins. Co. v. Woodworth, *supra*, on the question of domicile, is in line with the minority opinions, and indicates that the

[8] 2 Brock. 393.

[9] Bank of United States v. Deveaux, 5 Cranch, 62; Louisville, etc. R. Co. v. Letson, 2 How. 555.

[10] Morris v. Pugh, 3 Burr. 1243.

[11] Bouvier's Law Dict. "Residence," 2 Kent Com. p. *431.

question whether corporations shall continue to enjoy a privilege under the present removal act, denied to individuals under similar circumstances, will ultimately be settled in accordance with the justice of the matter and the evident intent and purpose of the statute.

CHARLES R. PENCE.

Kansas City, Mo.

CORPORATE STOCK—UNREGISTERED TRANSFER—STOCKHOLDER'S LIABILITY.

CHEMICAL NAT. BANK V. COLWELL.

Court of Appeals of New York, Second Division, March 22, 1892.

1. Under a statute (Laws N. Y. 1875, ch. 611, § 17) providing that no transfer of stock shall be valid for any purpose whatever until entered in the transfer book and a by-law providing that stock could be transferred only upon the books of the company, the fact that a transfer made by a stockholder of all his stock, 80 shares, for the purpose of severing his connection with the company, was not registered as requested by him, because the company had provided no book for that purpose, as required by its by-laws, will not invalidate a transfer so as to render the stockholder individually liable for a subsequently contracted corporate indebtedness, although when the transfer was entered in a book procured afterwards, a certificate for 75 shares only was issued to the transferee and, at the suggestion of an officer of the company, a certificate of five shares was issued to defendant without his knowledge, which he was subsequently induced to accept.

2. A statute (Laws N. Y. 1875, ch. 611, § 10) providing that directors of corporations shall be stockholders of at least five shares, and shall hold office until their successors are chosen, will execute itself upon the assignment by a director of all his stock and divest him of the directorship.

PARKER, J.: The debt which lies at the foundation of the judgment under review is alleged by the plaintiff to have been incurred by the New York Lumber Auction Company, Limited, a corporation organized pursuant to chapter 611 of the Laws of 1875. The corporation has no money with which to pay the obligation, and the assertion of defendant's liability to respond therefor is based on the default of the corporation in making the annual report required by statute. The defendant's denial of liability is placed on three grounds: (1) That the note having been made by the corporation, payable to its own order, the plaintiff, by discounting it for the personal benefit of Jones, a director and secretary and treasurer of the company, became burdened with the necessity of proving that the note was issued for the benefit of the corporation making it, which it failed to do; (2) that the defendant resigned as director November 5, 1885, and before the arrival of the time for making the annual report, in respect to which default was made; (3) that before the time came to make the report the defendant had ceased to be a stockholder, and therefore, by operation of the statute, had ceased to be a director. As we have reached the conclusion that the last position is well taken, and calls for a reversal of the judgment, the other questions will not be considered.

The corporation was created in July, 1885. The annual report, omitted, should have been made within 20 days after the 1st day of January, 1886, and the note in suit bears date July 2, 1886. The defendant was one of the subscribers to the capital stock of the company, and was elected a director. Subsequently, he informed Jones, the secretary and treasurer of the corporation, that he wished to resign all connection with the company, assinging as a reason the duties imposed by the executorship of his father's estate. After several conversations of the same general character, and on November 5, 1885, he, accompanied by his co-executor, Mr. Milne, went to the office of the company, and met Jones, the secretary and treasurer, and a Mr. Atchinson, an employee. The defendant asked for his stock, and received a certificate for 80 shares, which he indorsed as follows: "For value received, I hereby sell, transfer, and assign to Latimer E. Jones, eighty shares of stock, within mentioned, and authorize L. E. Jones to make the necessary transfer on the books of the company. Witness my hand and seal this 5th day of November, 1885. A. W. Colwell. In presence of T. S. Atchinson." After executing this assignment, he gave the stock certificate to Jones, at the same time saying: "Now, Jones, that severs all my connection with the Lumber Auction Company. I have got nothing further to do with it. You have got father's stock. He is dead, and that settles that, and I have given you mine, and that clears up all that; and I have nothing further to do with the company." Jones accepted the stock, and the defendant asked for the transfer-book, but the company did not have one, and he was told that it was not necessary. Some days later a transfer-book was obtained, and the stock transferred; but as Jones, at the suggestion of Atchinson, issued a new certificate to himself for 75 shares, and to the defendant, but without his knowledge, for the remaining 5 shares, and a few days later induced him to accept it, but not with the understanding that he should be a director, we are led to inquire whether the defendant did not cease to be a stockholder on the 5th of November. The importance of that inquiry rests in the requirement of the statute that the directors, "at their election, and throughout their term of office, shall be stockholders in such corporation, to at least the extent of five shares." If, then, defendant ceased to be a stockholder in the corporation on November 5th, the statute put an end to his official relation with the company. It should be observed that on the occasion of the assignment of the stock to Jones, and his acceptance thereof, it was understood to be an absolute disposition of all of

the defendant's shares. The subsequent issue of five shares to him was not in pursuance of any understanding had at the time of such assignment. and was done at the instance of Atchinson, who made out the certificate, and suggested to Jones that he persuade Colwell to accept it.

The consideration of the undisputed testimony to which we have referred is not embarrassed by any question as to the good faith of the defendant, or the propriety of his action. The corporation was solvent when he sought to terminate his relation with it as a stockholder and director, and the indebtedness which induces this controversy was created months afterwards. That he intended to make an effectual transfer of his stock is not questioned, nor is it asserted that he omitted to do anything which the situation permitted to effectuate his purpose. The contention is that he did not accomplish his desire because the transfer was not made on the books of the company that day. He sought to have that done, but it was not, because the company had failed to provide books for the purpose, as provided by its by-laws. It has been frequently held that such provisions are intended solely for the protection of the corporation; can be waived or asserted at its pleasure; are without effect, except for the protection of the corporation; and do not operate to prevent the passing of the entire title, legal and equitable, in the shares, as between the parties, by the delivery of the certificate, with the assignment and power of transfer. Isham v. Buckingham, 49 N. Y. 216; Robinson v. Bank, 95 N. Y. 637; McNeil v. Bank, 46 N. Y. 331; Lietch v. Wells, 48 N. Y. 585. The plaintiff's contention, then, is reduced to the position that, notwithstanding the defendant parted with all title, both legal and equitable, in the shares, he still continued to be a stockholder, within the meaning of the statute, because, through the neglect of the corporation in providing the proper transfer-books, the stock was not formally transferred on its books. We do not think the statute should receive such a construction. The requirement that a director should have at his election, and throughout his term of office; at least five shares, manifests that it was the policy of the legislature that the management of the affairs of such corporations should only be committed to those having a personal, pecuniary interest in its success or failure, in the conduct of business for which it was created; otherwise, the provision is without reason for its support. It would seem to follow that as soon as a director parts with all beneficial interest in, and control over, the stock which he is required to hold, and causes the officers of the corporation to have knowledge of such fact by a request that a proper transfer be made on the books of the company, he no longer possesses the qualifications which the statute declares to be essential. If the defendant had not been elected a director at the first election, and had simply subscribed for 80 shares of stock, it would hardly be contended that, after making the disposition of it which he did on November 5th, he would have been eligible to the position of director, nor would there have been any excuse for assuming that he was; for even the books of the company did not show an apparent eligibility. There were no transfer-books, and the only evidence there was on that subject, in the possession of the company, showed that the defendan t had parted with all interest in and dominion over the stock for which he had subscribed. For the same reason the statute, executing itself, operated to divest him of title to the office which he had ceased to be qualified to hold.

In the cases cited by the respondent the question presented for our determination was neither before the court nor decided; and as they have received consideration by this court in Cutting v. Damerel, 88 N. Y. 410, they need not be further alluded to in this connection. The judgment should be reversed. All concur, except Bradley, J., dissenting.

NOTE.—The only adequate means by which either the company or its creditors can ascertain who are its shareholders is a reference to the stock books and register of transfers which in almost every instance the charter or by-laws of the corporation require to be kept. A correct record of the issue and transfer of stock is therefore necessary to determine who are entitled to vote at corporate meetings, to whom dividends can be safely paid, and who are liable, as shareholders, to the company and to creditors. A novation of the contract of membership by which the assignor of the stock withdraws from the company and is relieved from liability, and the assignee takes his place, cannot be effected without an entry of the transfer upon the proper books. An unregistered transfer may be good as between the parties and pass the equitable title to the stock, but it will not divest the shareholder's liability to creditors. Johnsen v. Underhill, 52 N. Y. 203; Hall v. United States Ins. Co., 5 Gill. 484; Gilbert v. Manchester Co., 11 Wend. 627; Bank of Utica v. Smalley, 2 Cow. 770; Sargent v. Franklin Ins. Co., 8 Pick. 90; Quiver v. Marblehead Social Ins. Co., 10 Mass. 476; Meswith v. Washington Bank, 6 Pick. 324; Sargent v. Essex R. Co., 9 Pick. 202; Duke v. Cahawba Nav. Co., 10 Ala. 82; Brigham v. Mead, 10 Allen, 245; Moore v. Bank of Commerce, 52 Mo. 377; Chouteau Spring Co. v. Harris, 20 Mo. 382; St. Louis Perpetual Ins. Co. v. Goodfellow, 9 Mo. 149; McEwen v. West London, etc. Co., 6 Ch. 655; Sayles v. Blane, 19 L. J. Q. B. 19; London, etc. Ry. Co. v. Fairclough, 2 Man. & Gr. 674; Midland, etc. Ry. Co. v. Gordon, 16 Mees. &. W. 804; Kellogg v. Stockwell, 75 Ill. 68; Dane v. Young, 61 Me. 160; Worrall v. Judson, 5 Barb. 210; Rosevelt v. Brown, 11 N. Y. 148; Shellington v. Howland, 53 N. Y. 371; Bell's Appeal, 115 Pa. St. 88; Borland v. Haven, 37 Fed. Rep. 394; Richmond v. Irons, 121 U. S. 27.

The propriety of the rule is plain enough where the circumstances disclose simply a failure to register the transfer in the proper corporate book. But where, as in the principal case, the assignor has applied to have the transfer registered, and the fact that it is not done is due to the default or refusal of the company, and not to any shortcomings on his part, a different question is presented upon which the authorities are not in harmony. In a comparatively recent case (Harpold v. Stobart (1889), 46 Ohio St. 397, 21 N. E. Rep. 637), the Supreme Court of Ohio took the oppo-

site view from that adopted in the principal case. There the transfer was to a solvent person, and made before the company became insolvent and, as in the principal case, the transferor requested that it should be registered in the stock book. That could not be done because the stock book was not at the time present in the office, but was at the residence of the secretary. An entry was made, however, in a small book in the office, with the expectation that it should be transferred by the secretary to the stock book, which, however, was never done. The company subsequently became insolvent, and in a proceeding to enforce the transferor's liability as a stockholder, the court held that the only proper evidence of who were stockholders must be found in the company's books, and that as the vendor appeared by the stock book to be the owner of the shares, the entry of the transfer in the memorandum book was not sufficient to relieve him of liability to the creditors, notwithstanding the fact that the sale was in good faith and for value, and that the vendor believed he had done all that was necessary to effect a transfer of the stock, and the further fact that the company thereafter treated the purchaser as the owner of the stock so sold. See also Stanley v. Stanley, 26 Me. 191; Midland & Great West. Ry. Co. v. Gordon, 16 Mees. & W. 804; *Ex parte* Hall, 5 Ry. Cas. 624; Heritage's Case, L. R. 9 Eq. 5; Johnson v. Laflin, 5 Dill. 65; *Re* Bachman, 12 N. B. R. 223, 230. These cases proceed upon the idea that the vendor has power, by proper proceedings, to compel the transfer of the stock on the books, and that it is his duty to do so. *Re* Anglo-Indian, etc. Inst., 7 Ry. & Corp. L. J. 57; Johnson v. Laflin, 5 Dill. 65. Compare Robinson v. Bank, 95 N. Y. 637.

In England the system of transfers is somewhat peculiar. Application is made by the shareholder to the directors to be released from liability and have the name of the assignee of his shares substituted for his name in the official list of shareholders. These applications are usually considered and passed upon on certain fixed days. Where the application has been duly made by the shareholder, but in consequence of the negligence or omission of the directors it is not passed upon until insolvency of the company has intervened, it has been held that the transfer, if there is nothing that can be properly urged against it, must be regarded as having been made at the proper time, and the shareholder's name excluded from the list of contributors. *Re* Hercules Ins. Co., L. R. 9 Eq. 589; *Re* Nation's Case, L. R. 3 Eq. 77; Fyfe's Case, L. R. 4 Ch. App. 768; Evans v. Smalcombe, L. R. 3 H. L. 249; *Ex parte* Henderson, 19 Beav. 107; Ward's Case, L. R. 2 Eq. 226; Bargate v. Shortridge, 5 H. L. Cas. 297; Ward and Garfit's Case, L. R. 4 Eq. 189; White's Case, L. R. 3 Eq. 86; Shortridge v. Bosanquet, 16 Beav. 84. In short, the liability as a contributory follows the equitable title to the stock in the absence of such laches on the part of the transferrer as will amount to an estoppel.

CORRESPONDENCE.

IOWA INCORPORATION LAW.

To the Editor of the Central Law Journal:

From an item in your issue of Sept. 23, 1892, p. 241, concerning the assurance of immortality to single individuals who take the precaution to incorporate under the Code of Iowa, I am led to believe that some of the legal journals—the CENTRAL LAW JOURNAL excepted—have been indulging in a little unjustifiable plagiarism. The item on this subject was originally contributed by A. B. Mason to the *Green Bag*, and appeared in the April, 1892, number, p. 187, but without credit. If the *Chicago Legal News* also appropriated the item, I submit that the editors of both those journals ought to be barred from taking advantage of the Iowa statute, whether single or married.

W. JACKSON.

BOOK REVIEWS.

MINING RIGHTS IN COLORADO.

This is a new edition of Morrison's Mining Rights, being the seventh, thoroughly revised and brought down to date, besides being considerably enlarged. It has for years been the recognized authority on all questions of mining law pertaining to the region of Colorado. Besides being a concise treatise on mining law, it contains a copy of the land office rules recently revised, suggestions as to forms and proceedings in application for patents, and also the text of United States statutes.

AMERICAN RAILROAD AND CORPORATION CASES, Vol. IV.

The series, of which this is the fourth volume, is well and favorably known. It contains an admirable collection of the current decisions of the courts of last resort in the United States pertaining to the law of railroads, private and municipal corporations, including the law of insurance, banking, carriers, telegraph and telephone companies, building and loan associations, etc. Many of the cases contain valuable annotations by the editor, John Lewis, Esq. The volume is prepared in first class style, and would seem to be invaluable to practitioners in the special lines of its subject. The series is published by E. B. Myers & Co., Chicago.

HUMORS OF THE LAW.

First juryman—"We can't convict the prisoner of bigamy?"

Second—"Why not?"

First—"His having a wife made his second marriage null and void. Hence he has but one wife, and as I understand bigamy it is having two."—*New York Sun.*

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ABSTRACTORS OF TITLES—Limitation of Actions.—A cause of action against an abstractor of titles for giving a wrong certificate of title accrues at the date of the delivery, and not at the time the negligence is discovered or consequential damages arise.—LATTIN v. GILLETTE, Cal., 30 Pac. Rep. 545.

2. ACCOUNT STATED—Impeachment.—Where a father and son make a settlement of the accounts between them, in pursuance of which the son gives his note for the balance found due from him, and such settlement is made a little more than a year after the transactions occurred, and is afterwards reaffirmed by the son, such settlement should not be set aside after the father's death in the absence of any clear showing of fraud or mistake.— EDLER v. CLARK, U. S. C. C. (Ill.), 51 Fed. Rep. 117.

3. ADMINISTRATOR—Suit on Bond.—An administrator is not a public officer, within Code 1881, § 654, providing that before any action shall be commenced by a plaintiff, other than the State or municipality, against any public officer for official misconduct, leave shall first be obtained from the court or judge where the action is triable and leave to sue an administrator on his official bond is not necessary.—BARTLES v. GOVE, Wash., 30 Pac. Rep. 675.

4. ADMINISTRATOR ACTING AS ATTORNEY.—Where an attorney is administrator of an estate, and by suit conducted by himself collects of a railroad company damages for causing the death of his intestate, under an agreement with the heirs that he shall have extra compensation, he is entitled, on settlement of the estate, only to the usual statutory commissions as administrator for making such collection.—IN RE YOUNG'S ESTATE, Wash., 30 Pac. Rep. 643.

5. ADVERSE POSSESSION — Public Park.—Under Gen. St. Kan. ch. 80, art. 3, par. 4093, the open and notorious use by a township of certain lands, specifically marked upon a recorded plat, for more than 15 years, as a public park, under claim of title, is sufficient to bar an action therefor, even though the township had no paper title, and erected no fences or buildings on the land.—QUINDARO TP. v. SQUIER, U. S. C. C. of App , 51 Fed. Rep. 152.

6. APPEAL — Notice. — Where a notice of appeal recites that an interlocutory order as well as the final judgment is appealed from, the reference to the interlocutory order is surplusage, which does not affect the notice of appeal from the final judgment. — STATE v. HUNTER, Wash., 30 Pac. Rep. 673.

7. APPEAL—Statement of Facts.—A trial judge cannot settle a statement of facts after he has retired from office.—GORDON v. NELSON, Wash., 30 Pac Rep. 647.

8. ASSIGNMENT FOR BENEFIT OF CREDITORS.—Where an assignment for the benefit of creditors is voidable at their election, they may nevertheless be precluded from objecting to it if they have previously assented to or affirmed its provisions, with knowledge of the facts.—ABERLE v. SCHLICHENMEIR, Minn., 52 N. W. Rep. 974.

9. ASSIGNMENT FOR BENEFIT OF CREDITORS.—Where one has no legal interest in land assigned by him for the benefit of creditors, but only a small equitable interest, and the liens thereon are far in excess of anything such interest would bring if sold by the assignee, the case is not within Act Feb. 17, 1876, which declares that, when a court shall deem it for the manifest interest of all parties, it may order such a sale, and a stay of execution on all liens divested thereby, until the order shall have been expended or revoked.—IN RE KLECKNER'S ESTATE, Penn., 24 Atl. Rep. 708.

10. ATTACHMENT—Conflict of Laws.—Where the property of a firm resident in a foreign State is duly assigned under the laws of that State for the benefit of creditors, the courts of this State will not allow creditors resident in still another State to disregard such assignment, and acquire a preference by attaching the property of the firm in this State.—LONG v. GIRDWOOD, Penn., 24 Atl. Rep. 711.

11. ATTACHMENT—Dissolution.—Under How. St. § 8028, providing that a citation to show cause why an attachment should not be dissolved "shall be served within three days at least before the return day thereof," in computing such "three days" Sunday is to be excluded. —CAMPFIELD v. COOK, Mich., 52 N. W. Rep. 1031.

12. ATTACHMENT—Title.—The possession of property under a bill of sale given by the owner as security of an existing debt is not such an interest therein as entitles such possessor to hold the property against the attaching creditor of the owner.—SEIBENBAUM v. DELANTY, Wash., 30 Pac. Rep. 662.

13. ATTACHMENT BOND.—An action on an undertaking for the release of attached property cannot be maintained until return of execution unsatisfied in the attachment suit; Code Civil Proc. § 552, providing that, if such execution be returned unsatisfied, plaintiff may prosecute the undertaking, or may proceed as in other cases upon the return of an execution.—BROWNLEE v. RIFFENBURG, Cal., 30 Pac. Rep. 587.

14. ATTORNEY'S CONTRACT—Compensation.—Where a firm of attorneys is employed for a stipulated amount, payable on the termination of a suit, to assist other senior counsel to prosecute a specified suit, and such suit is not brought, and no further demand is made of such firm for said services, after waiting a reasonable time for such demand performance will be deemed waived,and recovery may be had on the contract of employment.—CARTER v. BALDWIN, Cal., 30 Pac. Rep 595.

15. BAILMENT — Wharfinger — Damages. — Where property is lost by the fault of a wharfinger, the measure of damages is the value of the property on the wharf.—OREGON IMPROVEMFNT CO. v. SEATTLE GASLIGHT CO., Wash., 30 Pac. Rep. 672.

16. BOND—Adoption of Seal.—After a bond purporting to be the individual bond of one K was executed, with his individual name and seal attached, two other persons, whose names nowhere else appeared in the bond, signed below K, without seals: Held, that there was nothing on the face of the bond from which it could be inferred that the seal of K had been adopted by the subsequent signers.—IN RE HESS' ESTATE, Penn., 24 Atl. Rep. 676.

17. BONDS — Enforcement in Foreign State.—Courts will not enforce the penal statutes or criminal laws of a foreign State, but, by the comity existing between States, or sovereignties, contracts and liabilities recognized by the laws of the State or country where made or established may be enforced in the courts of the State or country where the action is brought, unless contrary to the policy or laws of the latter.—MIDLAND CO. v. BROAT, Minn., 52 N. W. Rep. 972.

18. BURGLARY.—One who has no other place of abode than a room in an hotel, for which he pays rent by the week, and in which he keeps his personal effects, is not a guest of the hotel, but has an interest in the room, and ownership is properly averred in him in an indictment for burglary of the room.—STATE v. JOHNSON, Wash., 30 Pac. Rep. 672.

19. CARRIERS OF GOODS — Limiting Liability.—In an action by a shipper against a railway company for stoves broken *in transitu* under a contract limiting the company's liability to damages from its own negligence, where the evidence showed that the stoves were unusually brittle, and were liable to break by the mere handling, it was error to charge the jury that, if the goods were received by defendant in good condition, and were found in its possession broken, a legal pre-

sumption of negligence arose unless defendant showed how the injury occurred.—BUCK V. PENNSYLVANIA R. CO., Penn., 24 Atl. Rep. 678.

20. CERTIORARI.—Proceedings for the location of a county bridge, being regular and authorized by law, cannot be disturbed on *certiorari* by reason of anything outside the record.—IN RE COUNTY BRIDGE, Penn., 24 Atl. Rep. 695.

21. CHATTEL MORTGAGE—Intervention.—In an action by the holder of a chattel mortgage against the mortgagor for the possession of the mortgaged property, a mere judgment creditor, without lien by levy of execution or attachment, is not entitled to intervene for the purpose of showing the mortgage paid or fraudulent.—YETZER V. YOUNG, S. Dak., 52 N. W. Rep. 1054.

22. CONSTITUTIONAL LAW—Supplemental Proceedings.—Code Civil Proc. § 720, which authorizes a judge by order to permit the judgment creditor to institute supplemental proceedings on a judgment against a debtor of the judgment debtor, is not unconstitutional as taking property without due process of law, though it does not provide for notice of such proceedings to the judgment debtor.—HIGH V. RANK OF COMMERCE, Cal., 30 Pac. Rep. 556.

23. CONTEMPT—Procedure.—Neither the constitutional provision that "the right of trial by jury shall remain inviolate," nor that the accused shall be entitled "to meet the witnesses against him face to face," has application to summary proceedings to punish for contempt.—STATE V. MITCHELL, S. Dak., 52 N. W. Rep. 1052.

24. CONTRACT — Assumpsit.—Where plaintiff delivers lumber to defendant to sell, and out of the proceeds pay an indebtedness which he owes defendant, he cannot recover on a count in assumpsit for money had and received for a breach of the contract of bailment in selling the lumber at less than the agreed price.—ANDERSON V. CORCORAN, Mich., 52 N. W. Rep. 1025.

25. CONTRACT—Guaranty.—R agreed to sell a certain number of barrel hoops, to be shipped the following year, between April 1st and November 1st; S agreeing, in consideration thereof, and of the guaranty by N of the fulfillment of the contract on the part of R, to advance him $12,000, at the rate of $4,000, per month, first advance to be January 5th, and to continue until the $12,000 was all advanced, interest to be allowed on advances until paid by shipment of hoops or otherwise: Held, that the guaranty covered loss by reason of the advances.—SWEET V. NEWBERRY, Mich., 52 N. W. Rep. 1005.

26. CONTRACTS—Guaranty.—An agent for the sale of farm machinery entered into an agreement with his principal, as follows: "To guaranty the payment at maturity, or any time thereafter, when demanded, of all notes, and renewals of notes, taken for goods sold under this contract, indorse said notes as soon as taken, waiving demand, protest, and notice of nonpayments. Failure to indorse by said agent shall not affect above guaranty of payment:" Held, that the agent thereby agreed merely to guaranty the payment of the notes by indorsing them; and the liability of a guarantor of the agent's "performance" of such agreement ceased on the proper indorsement of the notes by agent.—STAVER & WALKER V. LOCKE, Oreg., 30 Pac. Rep. 497.

27. CONTRACT—Public Policy.—Where it does not appear that a person would sustain special damage by the illegal obstruction of a street by another, and could therefore prevent it only by instituting a public prosecution, his agreement to take no steps to prevent such obstruction is void as against public policy, and will not support a promise to pay money.—AMESTOY V. ELECTRIC RAPID TRANSIT CO., Cal., 30 Pac. Rep. 550.

28. CONTRACT — Quantum Meruit.—Where a written contract for furnishing materials and erecting buildings is void for failure to record it, as required by Code Civil Proc. § 1183, the party furnishing such materials and erecting such buildings may maintain an action on an implied contract for the value thereof; Code, Civil Proc. § 1197, providing that nothing in the foregoing statute shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.—REBMAN V. SAN GABRIEL VAL. LAND & WATER CO., Cal., 30 Pac. Rep. 564.

29 CONTRACT—Quantum Meruit.—Where plaintiff contracted with defendant to do work and furnish materials, and defendant prevented his completion of the work, though the contract was entire, he may recover the value of the labor done and materials furnished and used.—JOYCE V. WHITE, Cal., 30 Pac. Rep. 524.

30. CONTRACTS OF MARRIED WOMEN.—A married woman has no power to enter into a contract of partnership, and her estate is not liable on a contract made in the name of a partnership which she and another attempted to form.—WEISIGER V. WOOD, S. Car., 15 S. W. Rep. 597.

31. CONTRACT TO SELL LAND—Agent.—Where an agent lawfully authorized to contract to sell real estate as attempted to convey the same by deed under a defective power of attorney, the deed will be treated in equity as a contract for the sale thereof within the statute of frauds.—HERSEY V. LAMBERT, Minn., 52 N. W. Rep. 963.

32. CONTRIBUTION—Joint Obligors.—A creditor who has compounded with one of several joint obligors, and accepted from him his full share of the obligation, may maintain a creditor's bill against the other obligors without making the released obligor a party, under Code, §§ 2856, 2857, 2859, providing that a creditor may compromise with any co-obligor without impairing the contract obligation, and that the right of contribution between the co-obligors shall not be impaired thereby.—PENN V. BAHNSON, Va., 15 S. E. Rep. 586.

33. CORPORATIONS—Contract.—A contract by a corporation created under the laws of Ohio, while solvent and engaged in a profitable business, to sell its plant and assets for a consideration, the greater part of which is stock and bonds of another corporation to be organized to carry on the business, no exigency making such sale necessary for the protection of stockholders, is *ultra vires*, as, under the State laws, one corporation cannot become the owner of stock in another unless authority to do so is clearly conferred by statute.—EASUN V. BUCKEYE BREWING CO., U. S. C. C. (Ohio), 51 Fed. Rep. 156.

34. CORPORATIONS—Officers.—A trustee of a corporation cannot recover pay for services rendered within the scope of his duties as trustee, without an express provision therefor coming from some source of authority other than the trustees themselves.—BURNS V. COMMENCEMENT BAY LAND & IMPROVEMENT CO., Wash., 30 Pac. Rep. 668.

35. COUNTY TREASURER.—The right of a county to compel its treasurer to account for all public funds which come into his hands cannot be limited or controlled by the fact that it may also look elsewhere for relief in case of loss; for instance, to the clerk of the court in this case.—BOARD OF COM'RS. OF RAMSEY COUNTY V. NELSON, Minn., 52 N. W. Rep. 991.

36. COUNTY WARRANTS — Guaranty. — Defendant sold certain county warrants to plaintiff, and gave him a writing, saying, "I hereby guaranty their collection and payment within five years from the date hereof:" Held a guaranty both of collection and payment, and that plaintiff might treat it as a guaranty of payment, and proceed against defendant accordingly.—GREELY V. MCCOY, S. Dak., 52 N. W. Rep. 1050.

37. CRIMINAL EVIDENCE — Confessions.—Statements made by defendants, indicted together for murder, in which each accused the other of the crime without inculpating himself, and which did not refer to anything done in common as charged, are not admissible as confessions.—STATE V. CARSON, S. Car., 15 S. E. Rep. 588.

38. CRIMINAL LAW — Arson.—A vacant house is not within How. St. § 9123, providing for the punishment of one who shall willfully and maliciously burn in the night-time the "dwelling house" of another.—PEOPLE v. HANDLEY, Mich., 52 N. W. Rep. 1032.

39. CRIMINAL LAW—Forgery.—Gen. St. 1883, § 775, declaring that every person "who shall falsely make, alter, forge, or counterfeit . . . any auditor's warrant for the payment of money at the treasury, . . . or any order or warrant or request for the payment of money, . . . with intent to damage or defraud any person or persons, body politic or corporate, . . . or shall utter, publish, pass, or attempt to pass, as true and genuine, . . . any of the above-named . . . matters, . . . with intent," etc., shall be guilty of forgery, does not cover the forging of a warrant drawn upon a city treasurer, and which, on account of failing to show the purpose for which it was drawn, as required by the city charter, is void upon its face.—RAYMOND v. PEOPLE, Colo., 30 Pac. Rep. 504.

40. CRIMINAL LAW — Homicide.—In a murder trial, proof that defendant shot deceased while helping the sheriff to arrest him for a misdemeanor, and solely to prevent his escape, does not reduce the offense to manslaughter.—HANDLEY v. STATE, Ala., 11 South. Rep. 322.

41. CRIMINAL LAW — Intoxication — Murder.—Under Pen. Code, § 22, providing that whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any species or degree of crime, the fact of intoxication may be considered, there is no error in charging, in a homicide case, that intoxication can only be considered for the purpose of determining the degree of crime, the degrees of murder being based on intent.—PEOPLE v. VINCENT, Cal., 30 Pac. Rep. 581.

42. CRIMINAL LAW — Larceny — Fixtures.—Valves attached to a pump and boiler used and intended as a permanent improvement on a plantation for irrigating purposes, and arranged on skids laid in brick on the surface of the ground, so as to be readily movable from place to place, as occasion may require, are not, on account of annexation to the freehold, part of the freehold, in such sort as not to be the subject of larceny.—LANGSTON v. STATE, Ala., 11 South. Rep. 334.

43. CRIMINAL PRACTICE — Recognizance.—A culprit giving a recognizance to appear to an indictment, and not to depart from the court without leave, is not discharged from his obligation by the quashing of the indictment.—STATE v. HANCOCK, N. J., 24 Atl. Rep. 726.

44. DEATH BY WRONGFUL ACT.—In an action for the death of a child, the amount of plaintiff's recovery is limited to the actual pecuniary injury sustained by her, by reason of the death of her child.—MORGAN v. SOUTHERN PAC. CO., Cal., 30 Pac. Rep. 603.

45. DEED—Cancellation.—A deed, made by an elderly woman voluntarily and without undue influence, conveying to her nephew and his wife all her realty with the exception of a life estate, in consideration of an agreement on their part to make their home with her, repair and improve her house, and care for her during life, will not be set aside, where it appears that the deed was understandingly made, and that the grantees had expended several hundred dollars in coming from their home in a distant State, and several hundred more in repairing the house, and were ready to perform further when interrupted by the grantor.—CRESWELL v. WELCHMAN, Cal., 30 Pac. Rep. 553.

46. DEED — Cancellation.—Equity will not cancel a deed whereby land was conveyed to a manufacturing company in consideration of its agreement to establish its works thereon and operate them for a stated time, and of the incidental benefits expected to accrue therefrom to the grantor, because of the company's failure to operate the works for the stipulated time; the remedy being an action at law for breach of the agreement.—PIEDMONT LAND & IMP. CO. v. PIEDMONT FOUNDRY & MACHINE CO., Ala., 11 South. Rep. 332.

47. DEED—Delivery.—In an action by the widow of a grantor to cancel a deed on the ground of non-delivery, the evidence showed that some months prior to the grantor's death he made the deed conveying land to defendant, his son; that the day prior to his death the grantor delivered the instrument to one W, who took it to the register, stating that the grantor wished the same recorded, and then sent to defendant, which was done: Held, that the evidence failed to show a non-delivery.—CORKER v. CORKER, Cal., 30 Pac. Rep. 541.

48. DIVORCE—Custody of Children.—Under Civil Code, § 138, providing that in an action of divorce the court may give such direction for the custody of the children as may seem necessary, such order may be given though neither party prays for the custody of the child, nor alleges the unfitness of the other in that respect.—EX PARTE GORDAN, Cal., 30 Pac. Rep. 561.

49. DIVORCE — Cruelty.—Whether certain acts cause such "grievous mental suffering" as to be a ground of divorce, within Civil Code, § 94, is a question of fact for the trial court, and is not a question of law.—FLEMING v. FLEMING, Cal., 30 Pac. Rep. 566.

50. DOWER—Partition.—A wife is divested of dower in land owned by her husband in common with others by partition thereof in a suit to which her husband is a party, though she is not joined; and such is the case also where before the suit he had conveyed his undivided interest, he and his grantee, but not his wife, being joined as parties.—HOLLEY v. GLOVER, S. Car., 15 S. E. Rep. 605.

51. EASEMENTS—Obstruction—Evidence.—In trespass for obstructing a right of way over defendant's farm, testimony of a witness that while tenant of the farm under defendant he told her that she could not lawfully close the way, as it had been there so long, is competent on the question of damages, as showing that defendant acted with full knowledge of the situation.—BENNETT v. BIDDLE, Penn., 24 Atl. Rep. 738.

52. EJECTMENT.—In ejectment, plaintiffs should recover where they showed title through mesne conveyances from persons in possession many years ago as owners, and defendant claimed the right of possession under one who derived title from the same source as plaintiffs.—DRAKE v. HAPP, Mich., 52 N. W. Rep. 1023.

53. EJECTMENT—Evidence.—In ejectment, plaintiff's *prima facie* case made by proof of the signing, attestation, and acknowledgment of a deed to him by one having title, and the subsequent recording of the deed, cannot be overcome by the declarations of the grantor that the deed was not delivered.—INGLES v. INGLES, Penn., 24 Atl. Rep. 677.

54. EJECTMENT—License.—Where a railway company enters upon land and constructs its road under the mere license of the owner of the land, such license is a protection for acts done under it; but upon its revocation the company may be ejected from the premises, unless the right to continue to occupy the same is acquired by purchase or condemnation.—KREMER v. CHICAGO, M. & ST. P. RY. CO., Minn., 52 N. W. Rep. 977.

55. ELECTIONS—Residence of Voters.—Act 1890, ch. 573, § 14, providing that any one taking up a domicile out of the State shall be conclusively presumed to have lost his residence in the State, and shall therefore become disqualified to vote, unless at or about or within 10 days after removal he make affidavit that, notwithstanding such removal, he does not thereby intend to change his residence, but that he has a fixed and definite purpose to return to the State on or before six months preceding the next succeeding election in November, and further providing that, if he does not return six months before such November election, he shall become disqualified to vote, applies to one who removes from the State within six months of a November election, but in such case means the first November election more than six months after making the oath.—STERLING v. HORNER, Md., 24 Atl. Rep. 713.

56. EXECUTION—Sale.—Where the sheriff levies upon and sells property which the execution debtor might have selected as exempt under the laws of Missouri, (Rev. St. 1889, § 4907), a title passes to the purchaser, notwithstanding the failure of the sheriff to notify the

debtor of his right to make such selection.—FINLEY V. BARKER, Mo., 20 S. W. Rep. 177.

57. FALSE IMPRISONMENT.—A finding in an action for false imprisonment that plaintiff was imprisoned is sustained by evidence that she was accused of larceny, and told that an officer was at hand to arrest her if she did not produce the stolen articles; that when she went to the door as if to go out, her accuser stood between her and the closed door with his hand on the knob; and that, upon her refusing to go through the streets to her house with an officer to permit her house to be searched, she was taken there in a bus, and a search made. Her failure to attempt to escape is immaterial.—MOORE V. THOMPSON, Mich., 52 N. W. Rep. 1000.

58. FRAUDS, STATUTE OF.—An agreement to share the profits arising from the purchase and sale of real estate, apart from any contract for the transfer of an interest in the land itself, is not within the statute of frauds, and parol evidence thereof is admissible.—BATES V. BABCOCK, Cal., 30 Pac. Rep. 605.

59. FRAUDS, STAUTE OF.—A verbal agreement to share the profits arising from the purchase and sale of real estate is not invalid, as being within the statute of frauds.—CASE V. SEGER, Wash., 30 Pac. Rep. 646.

60. FRAUDULENT CONVEYANCES.—Civil Code, § 3440, which provides that every sale of personal property is void as to creditors unless accompanied by an immediate delivery and followed by an actual continued change of possession, applies to a sale of an undivided interest by a joint tenant of a chattel in actual possession.—BROWN V. O'NEAL, Cal., 30 Pac. Rep. 538.

61. GRANT—Adverse Possession.—Where defendants, in trespass to try title, claim the land in dispute under an ancient grant, and it appears that they and their grantors have been in continuous adverse possession more than a century under claim of right, a grant will be presumed.—TEXAS MEXICAN RY. CO. V. URIBE, Tex., 20 S. W. Rep. 153.

62. HABEAS CORPUS—Custody of Children.—Where it is to the manifest interest of a child to remain with relatives of her deceased father, who have always had the care of her, and who are amply able and desirous to provide for her maintenance and education, while her mother has no means to support her unless they are furnished by her husband, a man of small means, and the child is deeply attached to such relatives, while she looks on her mother as a stranger, a writ of habeas corpus for the possession of the child, issued on petition of the mother, will be discharged.—IN RE GATES, Cal., 30 Pac. Rep. 596.

63. HIGHWAY — Description.—An order of supervisors laying out a road must definitely describe its location. A description following a specified line "as near as practicable" does not locate a road anywhere; nor is the defect cured by a subsequent survey upon a definite line.—SONNEK V. TOWN OF MINNESOTA LAKE, Minn., 52 N. W. Rep. 961.

64. HUSBAND AND WIFE — Community Property.—Property acquired by purchase during marriage, whether the title be taken in the name of the husband or of the wife or of both, is presumed to be community property.—DIMMICK V. DIMMICK, Cal., 30 Pac. Rep. 547.

65. HUSBAND AND WIFE—Wife's Separate Property.—Where a married woman, with her own funds, establishes a boarding house, and with the proceeds thereof mingles a monthly allowance from her husband, and it is not apparent whether the furniture, etc., of the house is purchased with her own money or with that furnished by her husband, but her husband has nothing to do with the business, and by their actions and declarations both show that they considered the business hers alone, and no question is raised as to the rights of the husband's creditors, the furniture of such house must be deemed to be her separate property.—DIEFENDORFF V. HOPKINS, Cal., 30 Pac. Rep. 549.

66. INJUNCTION BOND — Assessment of Damages.—A federal court, which, granting a temporary injunction, requires the giving of a bond for possible damages, may, on dissolving the injunction, itself decide what damages, if any, should be paid; and it would never send the bond to another jurisdiction to be sued upon, and only in very exceptional cases would it send the matter before a jury.—COOSAW MIN. CO. V. FARMERS' MIN. CO., U. S. C. C. (S. Car.), 51 Fed. Rep. 107.

67. INSOLVENCY — Discharge — Fraud.—The insolvent act of 1880, § 49, providing that no discharge shall be granted to an insolvent debtor if he has been guilty of fraud, refers to frauds which affect the mass of his creditors, and the fact that one debt was created by fraud is not ground for refusing a discharge as to other debts.—SIEGEL V. HIS CREDITORS, Cal., 30 Pac. Rep. 559.

68. INSURANCE — Measure of Loss.—A fire insurance policy, known as "Michigan Standard," issued to plaintiffs on a quantity of lumber, provided that the loss should be ascertained according to the actual cash value of the property at the time any loss occurred, and "in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality." It appeared that plaintiffs manufactured the lumber covered by the policy, and it was destroyed by fire; that they owned a large quantity of standing pine timber from which sufficient lumber could be manufactured to replace that destroyed; that they continued to operate their mill after the loss occurred; that the actual cost to them to reproduce and replace the lumber would be $3.65 per M. feet less than the actual cash value upon the yards: Held, that the proper measure of damages was the actual cash value at the time of loss, and not the cost of manufacturing, at their own mill, a like quantity of lumber from their own timber.—MITCHELL V. ST. PAUL GERMAN FIRE INS. CO., Mich., 52 N. W. Rep. 1017.

69. INTOXICATING LIQUORS—Illegal Sales.—Where the complaint alleged that defendant, not being a druggist, sold liquor at retail without having paid the tax, posted up the notice, or given the bond required, and the testimony showed that defendant was a druggist, and failed to show that he had not filed a bond as such a conviction should be set aside.—PEOPLE V. BEACH, Mich., 52 N. W. Rep. 1035.

70. JUDGMENT—Default.—Where defendant is in default for failure to answer within the time granted by the court, of which he has knowledge, the clerk has authority to enter judgment for amount prayed in complaint.—WALL V. HEALD, Cal., 30 Pac. Rep. 551.

71. JUDGMENT—Joint Liability.—Under Hill's Code, §§ 244, 245, providing that judgment may be given for or against one or more of several defendants, and that "in an action against several defendants the court may * * * render judgment against one or more of them whenever a several judgment is proper, leaving the action to proceed against the others," where the plaintiff, having declared on a joint liability of several defendants, dismisses the action as to two of them, he is not precluded from proceeding to judgment against the others.—HAMM V. BASCHE, Oreg., 30 Pac. Rep. 501.

72. JUDGMENT — Process.—The fact that a judgment shows defendant to have been regularly served with process does not preclude evidence *aliunde* on motion to set aside the judgment made within a few days of its rendition.—NORTON V. ATCHISON, T. & S. F. R. CO., Cal., 30 Pac. Rep. 585.

73. JUSTICE OF THE PEACE—Jurisdiction.—Where, in a case in justice court, a writ of attachment is made returnable at a certain hour, and neither party appears within one hour of the time fixed, but plaintiff sends a written request to the justice to continue the case to a later hour, and the justice so continues it, the justice has jurisdiction to act.—WAGNER V. KELLOGG, Mich., 52 N. W. Rep. 1017.

74. LANDLORD AND TENANT.—In consideration of "one-fifth of the crop, delivered clear of expense," plaintiff agreed to furnish defendant "140 acres of land, more or less, to sow in wheat." Defendant sowed but 19 acres, and on the balance of the land grew a volunteer crop

of wheat: Held, that defendant was not entitled to harvest any portion of the volunteer crop.—SHAW V. MAYER, Cal., 30 Pac. Rep. 541.

75. LANDLORD AND TENANT.—A lessee, whose right has been terminated by notice to quit, and who is holding over merely by sufferance, has no interest in the leasehold on which he can recover for removal of a building thereon to make way for the opening of a street; nor can it be said that there is such a strong probability of renewal of the lease as to give him an interest, where nothing has been said or done by the lessor, after notice to quit, which could give rise to any expectation of renewal.—SHAABER V. CITY OF READING, Penn., 24 Atl. Rep. 692.

76. LANDLORD AND TENANT — Fixtures.—Machinery placed by a tenant in a building, and fastened to the floor by cleats or bolts in such a manner that it can be removed without injury to the building, is personal property, and is not covered by a mortgage given on the land and building while the tenant was in possession.—BARTLETT V. HAVILAND, Mich., 52 N. W. Rep. 1008.

77. LANDLORD AND TENANT—Mining Lease.—Under a lease of a coal mine, providing that the lessee "shall pay all and every the United States, State, and local taxes, duties, and imposts on the coal mined, the mining improvements of every kind, and the surface and coal land itself," the lessee is not required to pay municipal assessments for constructing a sewer or for paving a street.—PETTEBONE V. SMITH, Penn., 24 Atl. Rep. 693.

78. LANDLORD AND TENANT—Rent.—In an action to recover rent for a part of the term, it is a good defense that the tenant had previously surrendered the premises to the landlord, and that the latter had accepted the same.—MINNEAPOLIS CO-OPERATIVE CO. V. WILLIAMSON, Minn., 52 Rep. N. W. 986.

79. LANDLORD AND TENANT—Summary Proceedings.—Under Act March 27, 1890, which provides a summary proceeding for the possession of real property where the tenant holds possession without the landlord's permission, a complaint, which shows that defendant entered into possession under a lease from plaintiff, and refuses to quit the possession or pay the rent due, need not allege that plaintiff is entitled to the possession.—HALL & PAULSON FURNITURE CO. V. WILBUR, Wash., 30 Pac. Rep. 665.

80. LIMITATION — Township.—Section 21, Code Kan., provides that the time of the absence from the State or the concealment of a person against whom a cause of action accrues shall not be computed as part of the period within which the action must be brought: Held that, even if this section can be held to apply where the persons elected officers of a township either fail to qualify or remove from the township, for the purpose of preventing the enforcement of judgments against it, still the question is not presented where service of process or of notice to revive the judgments could have been made, within the statutory period, upon a trustee of the township, such trustee having been duly appointed by the county commissioners, upon the ground that they were no township officers.—DEMPSEY V. TOWNSHIP OF OSWEGO, U. S. C. C. of App., 51 Fed. Rep. 97.

81. LIMITATION OF ACTIONS — Adverse Possession.—The statute of limitations applies as well to the board of proprietors as to individuals, and an adverse possession of 20 years will bar a right of entry or recovery under title derived from that source.—YARD V. OCEAN BEACH ASS'N., N. J., 24 Atl. Rep. 729.

82. MECHANIC'S LIEN—Judgment.—Gen. St. § 1673, relating to mechanic's liens provides: "In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien or class of liens, which shall be in the following order: . . . And the proceeds of the sale of the property must be applied to each lien or class of liens, in the order of its rank; and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be rendered for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages:" Held, in an action to foreclose a mechanic's lien, that this statute did not authorize the rendition of a personal judgment against defendant, where the lien is invalid.—HILDERBRANDT V. SAVAGE, Wash., 30 Pac. Rep. 643.

83. MISTAKE—Recovery of Money Paid.—In the absence of fraud or undue advantage, money voluntarily paid, with a full knowledge of all the facts, but under a mistake of law, cannot be recovered.—EVANS V. HUGHES COUNTY, S. Dak., 52 N. W. Rep. 1062.

84. MORTGAGE.—Whether a conveyance is to be treated as a mortgage or a deed of trust depends on its essential character as shown by its terms, and not on whether the grantee is a creditor whose debt is to be paid out of the proceeds arising from the execution of a trust therein declared.—MORE V. CALKINS, Cal., 30 Pac. Rep. 583.

85. MORTGAGE—Assignment.—A grantor of land took back a mortgage for the purchase money, and assigned it to a *bona fide* purchaser. At the time of the sale of the land he represented the same to be free from all incumbrances, though he knew of two prior mortgages: Held, in an action by the assignee to foreclose, that the mortgage was subject to all equities between the defendant and such grantor.—COOLEY V. HARRIS, Mich., 52 N. W. Rep. 997.

86. MORTGAGE BY MARRIED WOMAN.—Where a woman unites with her husband in executing a mortgage on her separate property to secure a loan which he, as a stockholder, procures from a building association, the mortgage is valid as to her said property, and under the act of 1859 covers the premiums due by him as such stockholder, and the fines incurred by reason of his default in the payment of dues, as well as the actual loan.—CITIZENS' SAVING & LOAN ASS'N. OF ASHLAND V. HEISER, Penn., 24 Atl. Rep. 733.

87. MORTGAGE FORECLOSURE.—Where a mortgage to secure several notes contemporaneously executed provides that all the notes shall become due on default in the payment of any of them, on such default the mortgagee may proceed to foreclose for the notes due by their tenor, or may declare them all due, and foreclose for the entire debt pursuant to the terms of the mortgage, but he cannot have a receiver appointed to take charge of the mortgaged premises and collect rents pending the maturity of all the notes, and then have foreclosure.—PHILLIPS V. TAYLOR, Ala., 11 South. Rep. 323.

88. MORTGAGE FORECLOSURE — Redemption.—Several pieces of land were sold under a mortgage foreclosure to the mortgagee. The owner of one of the pieces afterwards sued to redeem, on the ground that he was not a party to the foreclosure: Held, that the mortgagee could elect whether plaintiff should pay the entire amount due under the mortgage, and so redeem all the property sold, or should pay a proportional part of that amount, and redeem merely the piece of which he was the owner.—WILSON V. TARTER, Oreg., 30 Pac. Rep. 499.

89. MUNICIPAL CORPORATION—Street Railways.—The use of a street by an ordinary street railway does not create an additional servitude.—PEOPLE V. FT. WAYNE & E. RY. CO., Mich., 52 N. W. Rep. 1010.

90. MUNICIPAL CORPORATIONS—Territory.—Act March 19, 1889, entitled "An act to provide for changing the boundaries of cities and municipal corporations, and to exclude territory therefrom," was not intended as a means by which a city might be practically disincorporated, and a petition for a special election thereunder should not be granted when the contemplated change of boundaries will exclude nearly the whole of the city's territory, nine-tenths of its population, and four-fifths of its trustees, and the population left will be less than one-half that necessary to form a municipal corporation of the lowest class.—WIEDWALD V. DODSON, Cal., 30 Pac. Rep. 580.

91. MUTUAL BENEFIT INSURANCE.—The beneficiary named in the policy of a mutual benefit society has no such vested right in the policy and the money it represents that the insured cannot change the beneficiary in compliance with the terms of the policy and with the consent of the association.—METROPOLITAN LIFE INS. CO. v. O'BRIEN, Mich., 52 N. W. Rep. 1012.

92. NEGLIGENCE—Evidence.—In an action for personal injuries sustained by a passenger in the falling of an elevator, evidence of advice given by one who put the elevator into place, as to how it should be handled or used, and what the effect would be if such directions were disregarded, is admissible for the purpose of showing that defendant had knowledge of what would constitute negligence.—SMITH v. WHITTIER, Cal., 30 Pac. Rep. 529.

93. NEW TRIAL—Motion.—Under Code Civil Proc. § 659, providing that "a party intending to move for a new trial must, within ten days . . . after notice of the decision of the court, . . . serve upon the adverse party a notice of his intention," a party is affected with "notice of the decision of the court" when served with a notice of intention to move for a new trial, which refers to "the decision and judgment heretofore rendered and entered therein."—WADDINGHAM v. TUBBS, Cal., 30 Pac. Rep. 527.

94. NUISANCE—Injunction.—Equity will not restrain the maintenance of a private underdrain from defendant's premises along a public street to a public surface drain, on the ground that the offensive odor arising from the mouth thereof is a nuisance, until plaintiff has established in a court of law that a nuisance exists, especially where but one witness testified to having noticed any odor therefrom after the drain was placed in the condition it existed when suit was brought, and he noticed it but once in passing more than 50 times, and a large number of witnesses passed the place many times without noticing any odor whatever.—WOOD v. MCGRATH, Penn., 24 Atl. Rep. 682.

95. PARTNERSHIP — Accounting.—Where two persons are partners with a certain company in a street-paving contract and in the profits arising therefrom, and an assignment is made by one only of the said persons to a third party of his interest, the other is still a necessary party to any complete determination of the partnership affairs, and should be brought in, therefore, under Code Civil Proc. § 389.—CUYAMACA GRANITE CO. v. PACIFIC PAV. CO., Cal., 30 Pac. Rep. 525.

96. PARTNERSHIP — Settlement.— Copartners having entered into an agreement and settlement based on their understanding as to what the books showed to be the state of their accounts, relief may be had if, by reason of a mutual mistake of the parties as to what the books showed, one party has paid to the other more than was his due.—COBB v. COLE, Minn., 52 N. W. Rep. 985.

97. PLEADING — Amendment.—When the complaint omits facts essential to a cause of action, but which might be supplied by amendment, under section 4938, Comp. Laws, before or after judgment, and these facts are proved at the trial after the judge has refused to exclude the evidence of plaintiff on the ground that the complaint does not state facts sufficient to constitute a cause of action, the defect in the complaint is no ground for a reversal of the judgment.—JOHNSON v. BURNSIDE, S. Dak., 52 N. W. Rep. 1057.

98. PROCESS—Service—Partnership.—Mill. & V. Code Tenn. §§ 3516, 3539, which authorize the service of process on any agent or clerk where the corporation, company, or individual has an office or agency in any county other than that in which the chief officer or principal resides, does not apply to a company other than a corporation or individual residing in another State or foreign country. If such substituted process be constitutional as to citizens of Tennessee within the territorial limits of the State, it cannot be as to citizens of another State, and such a statute violates the fourteenth amendment of the constitution of the United States, and the service is not due process of law.—BROOKS v. DUN, U. S. C. C. (Tenn.), 51 Fed. Rep. 188.

99. RAILROAD COMPANIES — Contracts.—A chartered railroad company may contract jointly with individuals in settlement of litigation to which it is a party, and bind itself jointly with them to construct, keep up, and perpetually maintain stock gabs and road crossings across the track of the company, upon the premises involved in the litigation.—CHATTANOOGA, R. & C. R. CO. v. DAVIS, Ga., 15 S. E. Rep. 626.

100. RAILROAD COMPANIES — Street Car Track. — Negligence. — Where one undertakes to cross a street car track with a wagon having a hood over it, confining his view of the track to 30 feet, the failure to lean forward so as to see an approaching car is negligence *per se*, barring a recovery for injuries received from a collision.—WHEELAHAN v. PHILADELPHIA TRACTION CO., Penn., 24 Atl. Rep. 688.

101. RAILROAD COMPANIES—Municipal Aid.—A special law empowering a municipal corporation to issue its bonds in aid of the construction of a railroad is to be strictly construed. The power conferred is not to be extended, nor the expressed conditions restricted, by doubtful construction.—MCMANUS v. DULUTH, C. & N. R. CO., Minn., 52 N. W. Rep. 980.

102. REAL ESTATE COMMISSIONS.—Where one authorized to sell certain property within a specified time for a given sum, he to have a certain amount for procuring a purchaser or making sale, notifies the owners within the time that he has a proposition on certain terms at the price fixed, and the proposition is not accepted, he cannot recover the agreed compensation, the customer being one with whom the owners had themselves been in treaty for the property for several months prior thereto, and who had that very day made an offer of the same amount.—HARTLEY v. ANDERSON, Penn., 24 Atl. Rep. 675.

103. RECEIVERS—Appointment.—Code Civil Proc. § 564, authorizes the appointment of a receiver in certain cases. Subdivision 6 provides that a receiver may be appointed "in all other cases where receivers have heretofore been appointed by the usages of courts of equity:" Held, that the superior court has jurisdiction to entertain a motion for the appointment of a receiver in proceedings for partition, and, having jurisdiction of the parties and subject-matter, prohibition does not lie to determine the legality of the action on the motion.—WOODWARD v. SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO, Cal., 30 Pac. Rep. 535.

104. SPECIFIC PERFORMANCE—Contract.—Complainant took possession of certain land under a parol agreement with the owner, who was his uncle, that, if complainant would cultivate the land and pay a yearly rental therefor, he should own the land at the owner's death. Complainant also took a written lease from the owner, in which he agreed to keep the premises in repair. His lease was renewed from time to time, the last extension being by a written agreement, in which the lessee agreed to "quit and give up possession of said premises at the expiration of any one year, in case the party of the first part [lessor] should sell or convey all or any of said lands, or in event that either party should die, or become dissatisfied, or in case the party of the second part [lessee] should fail to pay all or any part of the yearly rents:" Held, that the written lease and extensions thereof controlled the rights of the parties, and that specific performance of the parol agreement should not be decreed.—HARMON v. HARMON, U. S. C. C. (Ill.), 51 Fed. Rep. 113.

105. SPECIFIC PERFORMANCE — Judgment.—Where, in an action for specific performance of a contract to convey real estate, the defendants are unable to convey, but plaintiff does not know such fact when suit is commenced, and the action is brought in good faith, plaintiff is entitled to judgment for the amount paid on the purchase price.—CUNNINGHAM v. DUNCAN, Wash., 30 Pac. Rep. 647.

106. TAXATION — Constitutional Law.—The constitutional provision that no person shall be deprived of

property without due process of law does not require that delinquent taxes shall be collected by an action in court nor under the forms of legal procedure. If that method is adopted, the procedure is very much in the discretion of the legislature. All that is required, under any system, is that the substantial and fundamental rights of the tax-payer shall be protected. All defenses that savor of technically only, or that do not show that he is being unjustly subjected to taxation, may be excluded.—STATE v. CENTRAL PAC. R. CO., Nev., 30 Pac. Rep. 689.

107. TAX SALES—Constitutional Law.—Gen. Laws 1891, ch. 6,—an act which requires that under certain circumstances moneys paid by purchasers at tax sales of the lands therein mentioned be refunded by the counties in which the lands are situated,—is unconstitutional and void in so far as it relates to so called "school lands."—STATE v. BRUCE, Minn., 52 N. W. Rep. 970.

108. TRIAL — Default.—Though, as a general rule, a stipulation of counsel cannot be enforced unless put in writing or entered into court minutes, yet where the making of an oral agreement for an extension of time to answer or demur is not denied, and was relied on by defendant, a judgment of default taken against him in violation of such agreement will be set aside. JOHNSON v. SWEENEY, Cal., 30 Pac. Rep. 540.

109. TRIAL—Instructions.—Where several instructions, taken together, are correct, the fact that two of them are indefinite on a certain point, and so misleading, is not cause for reversal.—DOTY v. O'NEIL, Cal., 30 Pac. Rep. 526.

110. TROVER.—Where plaintiff in ejectment has recovered possession, he may maintain trover for the cutting and removal of standing timber from the premises by defendant while in possession under a *bona fide* claim of title.—WILSON v. HOFFMANN, Mich., 52 N. W. Rep. 1037.

111. TRUST DEED—Evidence.—Where, in a trial of the right of attached property, claimant bases his claim on a trust deed, and he offers to prove by the officer in whose office it should have been registered that the deed was duly filed in his office before the levy of the attachment, which proof was waived by plaintiff, the deed was properly admitted in evidence, against an objection that there was no proof of registration.—WILLIS v. SATTERFIELD, Tex., 20 S. W. Rep. 155.

112. VENDOR AND VENDEE.—Plaintiff bought property of defendant, paying part of the price in cash, and agreeing to pay the balance at stated times, and defendant's deed to the property was placed in escrow till the balance should be paid: Held that, in an action to recover money paid on the contract of sale, averments in the complaint that defendant "reclaimed" the escrow deed from the holder, and denied plaintiff's right to purchase under the contract with intent to rescind the contract, showed a sufficient excuse for plaintiff's failure to tender the unpaid balance of the purchase money and to demand the deed.—MERRILL v. MERRILL, Cal., 30 Pac. Rep. 542.

113. VENDOR AND VENDEE—Fixtures.—When one in possession of land under a contract of purchase erects a house thereon, the house becomes a part of the realty, and as such the property of the owner of the land, and he may bring replevin for it, if wrongly removed by the vendee.—MICHIGAN MUTUAL LIFE INS. CO. v. CRONK, Mich., 52 N. W. Rep. 1035.

114. VENDOR AND VENDEE—Rescission.—A complaint, in an action by the vendee named in a land contract against the vendor to recover the amount paid thereon, which fails to show payment or tender of the deferred installments and demand of conveyance, or refusal or inability of defendant to convey, is bad on demurrer; the mere failure of defendant to tender conveyance and demand payment on the day named not being sufficient to operate as a rescission of the contract.—TOWNSEND v. TUFTS, Cal., 30 Pac. Rep. 528.

115. WATER RIGHTS. — Where one is adjudged the owner of all of certain water and water rights, except an amount "equal to a constant flow of 2 1-3 inches of water, measured under a 4-inch pressure," adjudged to belong to defendants, the latter cannot use more than such 2 1-3 inches at any time, though they afterwards seek to compensate for such excessive use by refraining from using any water whatever.—ALHAMBRA ADDITION WATER CO. v. RICHARDSON, Cal., 30 Pac. Rep. 577.

116. WATER RIGHTS—Condemnation.—Plaintiff water company averred that it owned the water rights in a creek appertaining to the riparian lands on both sides within certain defined limits, and that to supply said "farming neighborhood" with water it was necessary to condemn and take a portion of the waters of the creek: Held, that the averment failed to show that the condemnation was for the use of the public.—ALISO WATER CO. v. BAKER, Cal., 30 Pac. Rep. 537.

117. WILLS—Construction.—A testator, after directing the payments of his debts, bequeathed to his wife all his "goods, chattels, merchandise, moneys, choses in action, lands, and personal property, to be hers during her natural life-time or widowhood." He further provided that a sufficient portion of his estate should be appropriated to the support and education of his children, and that at the death of his wife an equal division of his estate should be made to his children: Held, that the wife did not take a mere life estate with remainder in fee to the children, but she had full power to sell the personalty affected by the will, for the purpose of carrying out its provisions.—SMITH v. BEARDSLEY, U. S. C. C. of App., 51 Fed. Rep. 122.

118. WILLS—Construction.—Land was devised to testator's wife, remainder to one of his sons, by a will providing that, should any of testator's children die without a lawful heir or heirs, the property given them "should return to the then living children forever:" Held, that on the death of the widow and the remainder-man, the latter being unmarried and leaving no issue, the land vested in the children then surviving, and that a child of another deceased son of testator took no interest therein.—RINGQUEST v. YOUNG, Mo., 20 S. W. Rep. 159.

119. WILLS—Legacy.—Where a will directs a trustee named, after the death of all testator's brothers and sisters, to sell certain property, and "to pay a moiety of said proceeds of sale to and among the children of my deceased sister," though testator leaves a surviving brother, the legacy to the children of the deceased sister vests immediately on testator's death.—SPENCER v. GREENE, R. I., 24 Atl. Rep. 742.

120. WILLS—Probate.—The admission of a will to probate, either in solemn or common form, merely establishes the fact that the will has been made as required by statute, and does not preclude inquiry as to the validity of one or more of its provisions, or as to their proper construction or legal effect.—BURKETT v. WHITTEMORE, S. Car., 15 S. E. Rep. 616.

121. WILL—Revocation—Deed.—A father executed a will in 1872 devising one-third of his real estate to his widow absolutely, and the residue to his children in equal portions. Having been harrassed by lawsuits brought against him by a son-in-law, he executed a deed in 1887, conveying his lands to a trustee in fee for the benefit of his wife: Held, that the deed was a revocation of the will, and that, having been delivered in the grantor's life-time, it was valid and binding, though not recorded until after the death of the grantor.—COLLUP v. SMITH, Va., 15 S. E. Rep. 584.

122. WITNESS—Transactions and Decedents.—Where a claim against a decedent's estate is contested on the ground that a letter evidencing the claim is a forgery, the heirs of decedent and distributees of his estate are competent to testify as to the signature of decedent, such evidence not being within the meaning of Act May 23, 1887, § 5, which disqualifies a person, interested adversely to decedent, to testify as to matters occurring before the latter's death.—IN RE TOOMEY'S ESTATE, Penn., 24 Atl. Rep. 697.

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